## EDWARD TOMBA JACKSON vs CITY OF CLEVELAND

February 22, 2016

1	IN THE UNITED STATES DISTRICT COURT
2	NORTHERN DISTRICT OF OHIO - EASTERN DIVISION
3	RICKY JACKSON,
4	Plaintiff,
5	JUDGE BOYKO -vs- CASE NO. 1:15-CV-00989
6	CITY OF CLEVELAND, et al.,
7	Defendants.
8	KWAME AJAMU, et al.,
9	Plaintiffs,
10	-vs- JUDGE BOYKO CASE NO 1:15-CV-01320
11	CITY OF CLEVELAND, et al.,
12	Defendants.
13	/
14	Deposition of EDWARD TOMBA, taken as if upon
15	examination before Brian A. Kuebler, a Notary
16	Public within and for the State of Ohio, at the
17	offices of Friedman & Gilbert, 55 Public Square,
18	Suite 1055, Cleveland, Ohio, at 9:05 a.m. on
19	Monday, February 22, 2016, pursuant to notice
20	and/or stipulations of counsel, on behalf of the
21	Plaintiffs in this cause.
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## EDWARD TOMBA JACKSON vs CITY OF CLEVELAND

February 22, 2016

1	APPEARANCES:
2	Elizabeth Wang, Esq. Loevy & Loevy
3	2060 Broadway, Suite 460 Boulder, Ohio 80302
4	(720) 328-5642,
5	On behalf of the Plaintiff; Ricky Jackson;
6	Terry H. Gilbert, Esq.
7	Jacqueline C. Greene, Esq. Friedman & Gilbert
8	55 Public Square, Suite 1022 Cleveland, Ohio 44113
9	(216) 241-1430,
10	and
11	David E. Mills, Esq. The Mills Law Office, LLC
12	1300 West Ninth Street, Suite 636 Cleveland, Ohio 44113
13	(216) 929-4747,
14	On behalf of the Plaintiffs, Kwame Ajamu and Wiley Bridgeman;
15	Stephen W. Funk, Esq.
16	Roetzel & Andress 222 South Main Street
17	Suite 400 Akron, Ohio 44308
18	(330) 376-2700,
19	On behalf of the Individual and Estate Defendants;
20	Shawn Mallamad, Esq.
21	City of Cleveland Law Department 601 Lakeside Avenue
22	Room 106 City Hall Cleveland, Ohio 44114
23	(216) 664-2569,
24	On behalf of the Defendant, City of Cleveland.
25	



## EDWARD TOMBA JACKSON vs CITY OF CLEVELAND

February 22, 2016

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1		EDWARD TOMBA, of lawful age, called by the
2		Plaintiffs for the purpose of examination, as
3		provided by the Rules of Civil Procedure, being
4		by me first duly sworn, as hereinafter certified,
5		deposed and said as follows:
6		EXAMINATION OF EDWARD TOMBA
7		BY MS. WANG:
8	Q.	Would you please state your name and spell it for
9		the record?
10	A.	Edward Tomba, T-o-m-b-a.
11	Q.	What's your do you have a current position in
12		the Cleveland Police Department?
13	A.	Yes. I am the deputy chief of homeland security
14		and special operations.
15	Q.	What, generally, are your duties and
16		responsibilities in that position?
17	A.	My duties and responsibilities are to oversee the
18		operations of three commands within the division
19		of police; the Bureau of Homeland Services, the
20		Bureau of Special Investigations, and the Bureau
21		of Special Services.
22		And under those commands are three
23		commanders, all the investigative functions
24		within the division of police, our organized

crime and intelligence unit, and the staff at



- 1 the Cleveland Hopkins Airport.
- 2 | Q. How long have you had that position?
- 3 A. Seven years.
- Q. Prior to -- well, let's start from the beginning, actually.
- When were you first appointed to the Cleveland Police Department?
- 8 A. July 29th, 1985.
- 9 Q. Okay. And at that time, what was your -- did you go to the police academy?
- 11 | A. Yeah. Yes, I did.
- 12 Q. Okay. By the way, have you been deposed before?
- 13 A. Once before, yes.
- 14 | Q. How long ago?

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- 15 A. Probably ten years ago.
- Q. Okay. So just -- I'll go over some preliminary rules for a deposition just to refresh your recollection.

So we're here for a deposition that the City of Cleveland has designated you for in the case of Ricky Jackson versus the City of Cleveland and Kwame Ajamu and Wiley Bridgeman versus the City of Cleveland.

I'll be asking you some questions. If you don't understand any of my questions, let me



- 1 know, and I'll try to rephrase or make it 2 understandable; is that fair?
  - A. Okay. Yep.
- Q. All right. And so the record is clear, please allow me to finish asking my question before you begin your answer. That way the record will be
- 8 A. Yes.

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- 9 Q. Okay. We can take a break at any time that you wish, except for when a question is pending; is that fair?
- 12 A. Okay. Yes.
- Q. All right. So the police academy. How long were you in the police academy?
- 15 A. Four months.
- 16 Q. And then where were you assigned?

clear; is that fair?

- A. I was assigned to the basic patrol division of the Sixth District, which is on the east side of the city.
- 20 Q. How long were you in that position?
- 21 A. Six years.
- Q. All right. And then after that, what was your next position?
- A. I was assigned as a vice detective, vice detective in the Sixth District --



1 | Q. What kind --

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- 2 A. -- for 18 months.
- 3 | Q. What kind of crimes did you investigate in vice?
- 4 A. Prostitution, illegal gambling, and narcotics.
- 5 Q. All right. And then where did you go after that?
  - A. I was promoted to sergeant in 1993. And I worked the -- I was a road supervisor in the uniform division for a year, and I supervised a group of officers for a year.

And then after that, I was transferred to the internal affairs bureau for four and a half years, where we investigated allegations of police misconduct.

- O. What did you do as a road supervisor?
- A. Road supervisor is, I was in a patrol car, a supervisor, and I supervised the men and women in the Sixth District on a specific shift that answered calls for service.

So if there was a serious crime or something that they needed supervisory guidance, I would respond in uniform and talk to the officers on the scene, and we would come to a decision as to exactly what action to take.

Q. Okay. And then when you were transferred to internal affairs, you were there for four and a



- 1 half years?
- 2 A. Yes.
- 3 | Q. Okay. So was that '95 to '99?
- 4 A. Yes. Exactly.
- Q. Did you have a supervisory position in internal affairs?
- 7 A. No. I was a sergeant, and all the investigators
  8 were supervisors. We answered to a lieutenant,
  9 who answered directly to the chief of police.
- Q. After your stint in internal affairs, where did you go?
- A. I went to the Third District, strike force unit,
  which covered the downtown business district.

  And we investigated -- I was a supervisor. We
  investigated pattern crimes within the downtown
  business district, street robberies, auto thefts,
  narcotics, complaints.
  - I did that for about a year, and then I was promoted to lieutenant.
  - Q. What year was it that you made lieutenant?
- 21 | A. That was 2000.

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- 22 Q. Where did you go next as lieutenant?
- A. I was assigned to the Third District detective bureau, and I was responsible for the general duty detectives, who investigated crimes



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throughout the Third District and the strike force, who investigated pattern crimes, and also the vice unit.

And I had three sergeants underneath me that were the direct supervisors in those units.

- Q. Okay. So you supervised the sergeants?
- 7 A. I supervised the sergeants, yes.
- 8 Q. And the sergeants supervised the detectives?
- 9 A. The detectives. Correct.
- 10 Q. Okay. How long were you in that position?
- 11 A. I was in that position until 2002. And then I

  12 was appointed as the commander of the Bureau of

  13 Special Investigations.
- Q. And what where your duties and responsibilities there?
  - A. I oversaw the investigative function of the major investigative bureaus within the city, the homicide unit, sex crimes and child abuse unit, financial crimes unit, domestic violence unit, our bomb squad, our forensic lab. Any specialized investigation was handled by our unit.
- 23 Q. How long were you in that position?
- 24 A. Until 2005 -- 2006, 2006.
- 25 Q. Where did you go in 2006?



- 1 A. And I was promoted to deputy chief, my current position.
- 3 | Q. Where did you go to college?
- 4 A. Cleveland State University.
- 5 | Q. When did you graduate?
- 6 A. 2007.
- 7 Q. You got a BA or --
- 8 A. Bachelor's degree in public safety management.
- 9 Q. Did you work before you joined the Cleveland
  10 Police Department?
- 11 A. I did for three -- before that, I got out of --
- 12 I was at Ashley University when I got out of high
- school. And then from 1981 until I was hired, I
- worked at the Cleveland Clinic Foundation.
- 15 Q. What did you do at the Cleveland Clinic
- 16 Foundation?
- 17 A. I was an orderly.
- 18 | Q. And you said 1980 to 1981?
- 19 A. 1981 until I was appointed in '85.
- 20 Q. Oh, okay.
- 21 A. About four years.
- MS. WANG: All right. I'm going
- 23 to -- it's just the deposition notice.
- MR. MALLAMAD: I can look at the
- chief's if you guys need an extra copy.



1 (Thereupon, Deposition Exhibit 1 was marked 2 for purposes of identification.) 3 BY MS. WANG: I have handed you what the court 4 Q. All right. 5 reporter has marked as Deposition Exhibit 1. Ιt is the Amended Notice of Rule 30(b)(6) Deposition 6 7 to Defendant City of Cleveland. And just take a 8 look at that. 9 Have you seen that document before? 10 Yes. Α. 11 Now, I'm just going to go through these Ο. Okay. 12 topics and confirm that you have, in fact, been 13 designated by the city to testify about these 14 topics here today. 15 Okay. Α. 16 So are you the person who has been designated Ο. 17 by the City of Cleveland to provide binding 18 testimony on the city's behalf on the following 19 topics? 20 The city's written and unwritten 21 policies, practices, and customs in effect from 22 May 19th, 1970, through May 19th, 1980, relating 23 Documenting or memorializing the 24 developments in an investigation in such a way

that they would become part of the official file



1		during the course of an investigation, including
2		documentation and preservation of information
3		learned during a homicide investigation,
4		including placing witness statements and notes
5		thereof in the official investigation file.
6		Have you been so designated?
7	A.	Yes.
8		MR. MALLAMAD: Liz, if I could
9		just interrupt, obviously, you're going to
10		read each and every one of these sentences
11		and paragraphs. That's fine, but I'm sure
12		the chief could review this and give you a
13		global response if you
14		MS. WANG: Well, I want it on the
15		record. So I'm going to read each of the
16		topics.
17		MR. MALLAMAD: Okay.
18		BY MS. WANG:
19	Q.	B. Conducting and documenting photo or in-person
20		lineup or showup. Have you been designated to
21		testify about that topic?
22	A.	Yes, I have.
23	Q.	C. Use of informants or witnesses during a
24		criminal investigation, including disclosure of
25		such witnesses and payments, gifts, promises,



- 1 and threats made to such witnesses.
- 2 A. Yes.
- 3 Q. D. Disclosure of exculpatory evidence,
- 4 including, but not limited to, impeachment
- 5 materials, to criminal defendants, defense
- 6 attorneys, or prosecutors.
- 7 A. Yes.
- 8 Q. E. Conducting and documenting interrogations or
- 9 interviews of suspects and witnesses, including
- 10 juveniles.
- 11 | A. Yes.
- 12 Q. F. Writing, preserving, and destroying police
- reports, investigator/detective notes, memos,
- and exculpatory evidence, including impeachment
- materials, during the course of an investigation,
- including use, creation, contents of, storage,
- 17 | location, movement, and preservation of homicidal
- investigative files kept by the Cleveland Police
- 19 Department and Cleveland detectives.
- 20 A. Yes.
- 21 Q. G. Discipline, training, and supervision of
- 22 detectives.
- 23 | A. Yes.
- 24 | O. Okay. Have you been designated by the city to
- 25 testify -- to provide binding testimony on the



1		city's behalf on the topic of: 2. The city's
2		training of its law enforcement officers
3		in effect from May 19th, 1970, through May
4		19th, 1980, relating to A: Documenting
5		or memorializing the developments in an
6		investigation in such a way that they would
7		become part of the official file during
8		the course of an investigation, including
9		documentation and preservation of information
10		learned during a homicide investigation,
11		including placing witness statements and notes
12		thereof in the official investigation file?
13	A.	Yes.
14	Q.	B. Conducting and documenting photo or in-person
15		lineup or showup.
16		Have you been designated on topic 2B?
17	A.	Yes.
18	Q.	Have you been
19	A.	I'm sorry.
20	Q.	Are you following along?
21	A.	Yes, I am.
22	Q.	All right. Have you been designated on topic

Use of informants or witnesses during a

of such witnesses and payments, gifts, promises,

criminal investigation, including disclosure



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- 1 and threats made to such witnesses.
- 2 A. Yes.
- 3 Q. Have you been designated on topic 2D?
- 4 Disclosure of exculpatory evidence, including,
- 5 but not limited to impeachment materials, to
- 6 criminal defendants, defense attorneys, or
- 7 prosecutors?
- 8 | A. Yes.
- 9 Q. 2E. Conducting and documenting interrogations or
- 10 interviews with suspects and witnesses, including
- 11 juveniles.
- 12 A. Yes.
- 13 Q. 2F. Writing, preserving, and destroying police
- reports, investigator/detective notes, memos,
- and exculpatory evidence, including impeachment
- materials, during the course of an investigation,
- including the use, creation, contents of,
- storage, location, movement, and preservation
- of homicidal investigative files kept by the
- 20 Cleveland Police Department and Cleveland
- 21 detectives.
- 22 A. Yes.
- 23 Q. 2G. Discipline, training, and supervision of
- 24 detectives.
- 25 A. Yes.



Q. Have you been designated to provide binding testimony on behalf of the City of Cleveland on the topic of 3?

Any and all training provided to Eugene Terpay, James Farmer, Frank Stoiker, John Staimpel, Peter Comodeca, Michael Cummings, James White, Jerold Englehart.

A. Yes.

Q. Have you been designated by the City of Cleveland to provide binding testimony on topic 4?

The city's efforts to locate and produce files responsive to plaintiff's document request in this case. This request includes, but is not limited to, the persons with knowledge about those search efforts where efforts have been undertaken to locate and produce documents relating to the Franks' homicide investigation or to the police department's policies and procedures from different areas of the Cleveland Police Department and the City of Cleveland, including, but not limited to, location of the documents produced in this case between 1975 and the present day.

- 24 A. Yes.
  - Q. Have you been designated by the City of Cleveland



1	to provide binding testimony on topic 5?
2	The Cleveland Police Department and the
3	city's document retention policies from May 1975
4	to the present.

A. Yes.

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Q. Have you been designated by the City of Cleveland to provide binding testimony on topic 6?

Any efforts by the City of Cleveland to

identify, investigate, or present any of the following types of misconduct and discipline imposed by the city as a result of such investigations.

- A. Improper eyewitness identification procedures, including misconduct related to live in-person lineup and photographic showup or lack of documentation regarding the same.
- A. Yes.
- Q. 6B. Failure to place Brady evidence and information in the official investigative file or otherwise withholding material, exculpatory information from prosectors, suspects, criminal defendants and their attorneys.
- 23 | A. Yes.
- Q. 6C. Failure to document and preserve information learned during a homicide investigation.



- 1 A. Yes.
- 2 Q. 6D. Improper interviews, interrogations, or
- 3 interactions with juvenile witnesses and/or
- 4 juvenile suspects.
- 5 A. Yes.
- 6 Q. Have you been designated by the City of Cleveland
- 7 to provide binding testimony on behalf of topic
- 8 7, which is the final policymaking authority for
- 9 the City of Cleveland for the time period of May
- 10 19th, 1970, through May 19th, 1980, on policies,
- 11 procedures, practices, and training relating to
- 12 topics 1 through 6 listed above?
- 13 A. Yes.
- 14 Q. Thank you.
- 15 A. Uh-huh.
- 16 | O. Now, what did you do to prepare for this
- 17 deposition?
- 18 A. I met with Mr. Mallamad, and I reviewed some
- documents that he had provided from the City of
- 20 | Cleveland.
- 21 | O. Okay. When did you meet with Mr. Mallamad?
- 22 | A. We met twice last week. I believe it was on
- 23 | Tuesday and Friday.
- 24 | Q. Is that it? Are those the only times you met
- 25 | with him?



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- 2 | Q. How long did you meet with Mr. Mallamad?
- 3 A. Total? Probably about six hours.
- 4 Q. What documents did you review in preparation for your deposition?
  - A. It was a series of documents that were responsive to the requests that were made. And there was policy, general police orders, some policies from the State of Ohio. There were documents that were related to the Manual of Rules during the years in question.

There was a large, large group of responsive documents. We reviewed all of those. Exactly, every single document, I couldn't tell you exactly what it was, but...

- Q. All right. So it's your understanding that you reviewed documents that have been produced in this case?
- 19 A. Yes.
- Q. Okay. Did you speak with anyone else, besides
  Mr. Mallamad, in preparation for the deposition
  today?
- 23 | A. Yes.
- 24 Q. Who else did you speak to?
- 25 A. I talked to -- a phone conversation with Steve.



- 1 | O. With Mr. Funk?
- 2 A. Yes.
- 3 | Q. When did you speak with him?
- 4 A. That was Friday afternoon.
- 5 | Q. What did you say to him? What did he say to you?
- 6 A. Just a general overview of what to expect today,
- being the fact that I haven't been deposed in
- 8 quite a long time.
- 9 Just that -- really, reiterated a lot
- of things that Shawn and I spoke about about
- answering the questions relative to the
- responsive documents that were provided.
- 13 | O. Did Mr. Funk call you, or did you call him?
- 14 A. Shawn called him, and we had a conference call.
- 15 | Q. So who else was present for that conversation --
- 16 A. Just the two of us.
- Q. Sorry. Just let me finish the question so the
- 18 record is clear.
- 19 Who else was present for that conversation,
- besides yourself, Mr. Mallamad, and Mr. Funk?
- 21 A. It was just myself, Mr. Mallamad, and Mr. Funk
- 22 was on the phone.
- 23 Q. Okay. And I'm sorry if I just asked you this,
- 24 but how long was that phone call?
- 25 A. Ten minutes at best.



- Q. Was there anything else that was said in that conversation, other than what you've already testified to?
- 4 A. No.
- 5 Q. Did Mr. Funk point out any documents for you to review?
- 7 A. No, he didn't.
- Q. Did he tell you anything about what the defendant officers were alleged to have done in this case?
- 10 A. I was aware of what they were alleged to have done.
- 12 Q. Did you review the complaint in this case?
- 13 A. Yes.

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- Q. Besides anything that you might have learned from speaking with your attorney, how else are you aware of what the allegations are in this case?
  - A. I really don't have any other knowledge, except when I was contacted by the law department to start this process.
- Q. Okay. Now, was there anybody who was in the
  Cleveland Police Department in the 1970s that
  you spoke with in preparation for your deposition
  today?
- 24 A. No, there isn't.
  - Q. What is your understanding, generally, of how



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written policies for the Cleveland Police
Department were established in the 1970s?

A. Well, I can speak as to how things are done today. And after reviewing those documents, it looked like they were about the same. So I can tell you how we do things today.

We have a Manual of Rules. We have general police orders, and we have divisional notices.

And reviewing some of those documents, I see that they had the same thing back in the 1970s.

So, you know, the orders and the notices are established by the chief of police, and they are given to the members of the Division of Police to follow.

- Q. And so I just want to be clear which time period you're speaking of now. The orders in the 1970s were -- both today and in the 1970s are established by the chief of police?
- A. By the chief of police, yes.
- Q. And you're talking about the general police orders?
- 22 A. Yes, I am.
- Q. Okay. And in the 1970s, was there anybody else responsible for establishing or promulgating police orders, general police orders, besides



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the chief of police?

A. The ultimate responsibility comes from the chief of police, but he gathers information from a lot of different sources. It could be new case law. It could be new policies within different organizations that we work with.

Anything that would change or guide the men and women of the Division of Police about how they do their jobs.

So he is the sole policy setter for the division, but there are a lot of other outside, I would have to say, people that make recommendations.

And, you know, we do follow the law. So if the law changes, the chief will put that in the policy.

- Q. Okay. So in the 1970s, the chief of police was the final policy maker for the department?
- A. Yes.
  - Q. And that's on any of the topics -- any of the issue areas that might confront a police officer?
- 22 A. Yes.
- Q. What was the role in the 1970s of the director of public safety in relationship to the police chief?



- A. Well, the director of public safety answers to the mayor of the City of Cleveland. And the director of public safety is responsible for management and oversight of the Division of Police, the Division of Fire, the Division of EMS, and the dog warden.
- 7 | Q. And that was true in the 1970s as well?
- 8 | A. Yes.

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- 9 Q. Did the director of public safety have any
  10 responsibility for creating or promulgating rules
  11 or general orders for the department?
  - A. In the 1970s, no. I believe it was still the office of the chief of police was the final policy maker. And I think -- I believe that is set by the charter of the City of Cleveland.
- Q. Okay. You mentioned there was a Manual -- there is a Manual of Rules --
- 18 A. Yes.
- 19 | Q. -- that was in existence in the 1970s?
- 20 A. Yes, there is.
- 21 | Q. Is there still a Manual of Rules today?
- 22 | A. Yes, there is.
- Q. The Manual of Rules, in the 1970s, do you know who created that, the one that was in existence in the 1970s?



- 1 A. No. I don't recall.
- Q. Today, who is responsible for creating or revising the Manual of Rules?
- 4 A. Chief Williams.
- 5 | Q. Chief Williams?
- 6 A. The chief of police.
- 7 Q. Oh, the chief of police.
- 8 | A. Yes.

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- 9 Q. And does he receive input from people in the same
  10 way, in terms of the Manual of Rules and making
  11 updates or edits to it, as he did -- as he does
  12 with the police orders?
- 13 A. Yes, he does.
- Q. What's the difference between the kinds of items, you know, rules that were in the Manual of Rules, versus the general police orders?
  - A. The Manual of Rules is a document that provides responsibility, job descriptions of different ranks within the division. It provides a broad overview of what is expected, as far as conduct for the members of the Division of Police.

And the general police orders -- I could describe them as more operational, day-to-day responsibilities that a supervisory officer, all the way down to a first line uniformed officer



1 would follow.

So the Manual of Rules is very -- is broad, and it encompasses our conduct and our responsibilities. And then the general police orders encompass the day-to-day things that take place in the field.

- Q. Today, in the general police orders, is there an order concerning the officer's obligation to disclose exculpatory evidence?
- 10 A. Today?
- 11 | Q. Yes.

- A. Not in a general police order, but, you know, the number one responsibility for a police officer is to follow the law and, you know, be honest and conduct their job with integrity, but is it documented anywhere in a general police order? No. But that is following the law that is expected of them.
  - Q. Is there any rule, policy, or written document in the Cleveland Police Department today that explains to officers what their duties are to disclose exculpatory evidence?
  - A. Well, I would have to say that they -- their responsibilities, particularly in the detective function, is that we are the -- it's outlined



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that we are the gatherer of information and facts.

And we present everything that we gather to the prosecutor for that decision. We don't make that decision as to what is exculpatory or not. We provide everything that we get during the course of an investigation, and we give it to the prosecutor's office. That is our duty.

And then they decide what is or what isn't through the legal process. That isn't something that is mandated, or that is not a responsibility of a Cleveland police officer.

- Q. The duty and obligation that you just described to disclose all evidence to the prosecutor, is that written down?
- A. That's in -- those are in different policy manuals within the Division of Police.
- 18 | Q. Today?
- 19 A. Yes.
- 20 | Q. Which policy manual?
- A. It's in the homicide unit policy manual,
  sex crimes. Any investigative unit within the
  Division of Police is -- it's pretty much a
  standard operating procedure when conducting
  an investigation, that any and all evidence,



1		information gathered, is turned over to the
2		prosecutor's office so they can make an informed
3		decision.
4		And all of our cases are reviewed by a
5		prosecutor. We don't make any of those decisions
6		on our own.
7	Q.	Okay. And that is written down in policy
8		manuals
9	A.	Yes.
10	Q.	that exist today?
11	A.	Yes, it is.
12	Q.	And you said in any of the that is in so
13		there is more than one policy manual?
14	Α.	Yes.
15	Q.	There is a policy manual for each investigative
16		division?
17	A.	Each investigative unit.
18	Q.	Oh, unit.
19	A.	Each investigative unit.
20	Q.	And what do you mean by investigative unit?
21	A.	I would say homicide is an investigative unit.
22		Sex crimes and child abuse is an investigative
23		unit. Narcotics is an investigative unit.
24		There are broad investigative

responsibilities and requirements that we



- all follow. And then the uniqueness of the investigation to a particular unit, there are policies that guide them also.
  - Q. Okay. The requirement of officers to disclose evidence to the prosecutors, where else is that written down today, besides in the policy manual?
  - A. I don't think it's written anywhere else.
- Q. In the 1970s, what was the role of -- or sorry.Strike that.
- Today, you said you have divisional notices?
- 11 A. Yes.

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- Q. Okay. And what is the purpose of divisional notices today?
  - A. Divisional notices are temporary notices, such as -- a general police order is an order that is to be followed until the general police order is revised.

A divisional notice is a notice of -- such as December 23rd and 21st, municipal prosecutor's office will not be open for prosecutor consultation. Tomorrow is St. Patrick's Day. The uniform of the day will be such and such.

So they're operational notices that have an expiration, usually, within a week or so. It's just information that the police chief wants to



- get out to the division.
- Q. Okay. And back in the 1970s, were there divisional notices then, too?
- 4 A. During the review of my documents, I did not see any.
- Q. I saw a reference to departmental notices that existed back in 1970.
- 8 A. Same thing. Departmental notices could be the same thing as a divisional notice.
- Q. Do you have things called departmental notices today?
- 12 A. No. We have divisional notices.
- Q. So you think that the -- if there was a reference to departmental notices in one of these documents from the 1970s, it may be the same thing as the divisional notices today?
- 17 A. It may be, yes.
- Q. All right. Besides -- today, you mentioned there is Manual of Rules, general police orders, divisional notices. There is policy manuals for each investigative unit.
- 22 A. Yes.
- Q. Where else are there written policies and procedures for the operation of the department today?



- 1 A. That is it.
- 2 Q. Okay.
- 3 A. I believe that is it.
- Q. Okay. Back in the 1970s, were there written

  policies or procedures for the operation of the

  department besides what you've already testified

  to, which were the Manual of Rules, the general

  police orders?
  - A. Just what -- from the documents that I reviewed, those were the only documents that had the rules and regulations. And I didn't see any policy manuals.
- Q. Okay. With respect -- today, you -- strike that.

  You testified that, currently, detectives

  have an obligation to turn over information that

  is in their file to the prosecutor?
- 17 | A. Yes.

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- 18 | 0. Is that correct?
- 19 | A. I did.
- Q. Today, if there were information that was known to the detective that was not contained within the investigative file, would they have an obligation to turn that over to the prosecutor?
- 24 A. Yes, they would.
- 25 Q. And how would they -- how would they communicate



1 that information?

- A. A lot of different ways, but I would imagine face-to-face.
- Q. Is there a requirement that that -- a written policy or requirement or rule that requires officers to document the fact that they have communicated such information to prosecutors?
- A. Could you rephrase that?
- 9 Q. Okay. If there were information that an officer
  10 verbally communicated to the prosecutor's office,
  11 is there any -- does he have to document that
  12 somewhere?
- 13 A. Yes.

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- 14 O. Where does he have to document that?
- 15 A. He would document that in -- today?
- 16 | O. Yes.
  - A. We call that a form 10, and that would be a written -- a written report. And at times, that would be at the request of the prosecutor's office.

There are conversations that take place that are not documented in a form 10, but if it's an investigative -- if it's something that is relevant to the investigation, the prosecutor may even say, "You know, I need you to type



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- 1 that out and document it in a form 10."
- Q. Is there a department -- is there a rule in the department or a policy somewhere that explains to officers that they are to document that information in a form 10?
  - A. Yes, there is. It's in the policy manuals.
- 7 Q. For each of the investigative units?
- 8 A. For each of the investigative units. Yes, there
  9 is.
  - Q. When were the policy manuals, the ones that exist currently, the policy manuals for the investigative units, when were those created?
  - A. I don't know exactly. I don't know. I know when I was appointed in my command of special investigations, those manuals existed, and we update them every year.
    - So I can tell you from my experience in the last ten years that they have been updated every year for the last ten years.
  - Q. And is the police chief responsible for updating those, too?
  - A. He gives us the order, and we push that down to our commanders and our lieutenants, who do the operational work in those bureaus.
    - We'll tell the lieutenant January 1st, "By



March 1st, please have your manuals updated with any new case law, any new policy, any new procedure that's taken place over the last year."

Q. Okay. Taking a look at the deposition notice, let's talk about topic 1A. Topic 1A relates to the city's written and unwritten policies, practices, and customs in effect from May 19th, 1970, through May 19th, 1980, relating to documenting or memorializing the developments in an investigation in such a way that they would become part of the official file during the course of an investigation.

What written policies or procedures were there in place during that time period, relating to that topic?

A. You know, when I was reviewing this, as far as written policies in the '70s and the 1980s, I can't speak with certainty on that, but I go back to the Manual of Rules and to, you know, what the duty of a law enforcement officer is.

And it's to follow the law. And all this is part of, I believe -- and it is definitely, you know, following the law.

So I would assume -- I don't have any evidence to prove it, but I would assume that the



- officers that were conducting that -- those
  types of investigations during that time frame
  would document their work and provide everything
  that they have to the prosecutor, but as far as
  manuals and any type of guidance, just what is
  in the general police orders and the departmental
  notices.
- Q. Well, have you seen a departmental notice on -specifically about officers' obligation to document or memorialize the developments in an investigation in such a way that they would become part of an official file during the course --
- 14 A. I saw that.
- 15 | Q. -- of an investigation?
- 16 A. Yes, I did.
- 17 Q. A departmental notice?
- 18 A. Yeah. I believe I saw that in the documents that
  19 we reviewed.
- 20 | Q. Which one was it?
- A. I believe that was the -- I believe that was
  the document that was created after a letter was
  received from the Cuyahoga County prosecutor at
  the time about turning over evidence and making
  sure all the evidence that was obtained was given



- 1 to the prosecutor's office.
- 2 | Q. Because that was a general police order, right?
- 3 A. Right. It was.
- 4 | Q. That's was number 19-73?
- 5 A. Yes.
- 6 Q. Okay. We'll talk about that.
- 7 A. Okay.
- 8 | Q. Let's talk about the Manual of Rules.
- 9 MS. WANG: Can I have this marked
- 10 as Exhibit 2?
- 11 | - -
- 12 (Thereupon, Deposition Exhibit 2 was marked
- for purposes of identification.)
- 14
- 15 BY MS. WANG:
- 16 | O. All right. So this is -- for the record, it's
- the version of the Manual of Rules produced by
- 18 the City of Cleveland. It is Bates stamped CLE
- 19 3219 through CLE 3305.
- 20 Could you take a look at that and let me know
- 21 if you've seen it before?
- 22 A. I have seen this document before.
- 23 | O. Okay. And this is one of the documents that you
- reviewed in preparation for your deposition?
- 25 A. Yes, it was.



- Q. Okay. Now, if you turn to the second page right here.
  - A. Uh-huh.

- Q. That is CLE 3220. There is a cover or an inside cover that lays out the title of this manual.
- It's the Rules of Conduct and Discipline for the
  Officers, Members, and Employees of the Division
  of Police and the Department of Public Safety
  1950.

Is it your understanding that this manual was published in 1950?

- 12 A. Yes.
- Q. And this was the -- this was the Manual of Rules that governed, generally, the conduct of officers in the department?
- 16 A. Correct. It is.
- 17 | O. And it was in effect in 1975?
- 18 | A. I believe it was.
- Q. Okay. Do you know when this manual stopped being in effect?
- A. The manual is still in effect today. We still have a Manual of Rules. So I don't believe that there was ever an interruption in the producing of the manual.
  - Q. The Manual of Rules that you have today, does it



- look like this one? Is it the 1950 one?
- 2 A. It looks similar.
- 3 Q. Is there -- the one that you have today, is that
- 4 a different publications date?
- 5 A. Yes. That is updated also every year.
- 6 Q. That is updated every year?
- 7 A. Yes.
- 8 Q. Do you know when the -- this version of the
- 9 Manual of Rules, the 1950 one, stopped being in
- 10 effect and there was like a new one that was in
- 11 effect?
- 12 A. No, I don't. No, I don't.
- 13 | Q. Do you know what the handwritten markings are on
- 14 the bottom here?
- 15 | A. No, I don't.
- 16 | O. And by that, I just mean, for the record, there
- is a handwritten number 609 Clifton John. And
- then under that, it says 902 of Rocha 3/1/57.
- 19 Do you see that?
- 20 A. Yes, I do.
- 21 | Q. Do you know where this Manual of Rules was
- 22 obtained from to produce it in discovery?
- 23 | A. Yes. I believe it was discovered in our police
- 24 museum.
- 25 | Q. Okay. Do you know if perhaps the names that are



handwritten here were officers who donated their
copy to the museum?

A. Yeah. That is a good possibility. We -- number 609, the way that is written, traditionally, I mean, it looks like a badge number to me.

I mean, I would write my badge number like that with that sign and then my badge number and then my last name first and then my first name.

That is just kind of a traditional way that law enforcement officers within the city would write things.

- Q. Okay. Do you know how this -- in the 1970s, do you know how the Manual of Rules was distributed to the officers?
- A. In the 1970s, I would say it was distributed in a hard copy version given to each officer maybe in a binder, but each officer was required to have a copy of this.
- Q. Okay. And so when would officers get their copy of the Manual of Rules? Like, for instance -- and I'm just going to give an example -- if an officer -- you know, this was originally published in 1950, but if an officer didn't come onto the force until 1962 or something, would they just get a copy of the Manual of Rules at



that time?

- A. The Manual of Rules was discussed, and the officers were trained on it while they were in the academy. So in your scenario, if an officer was in the police academy in 1962, when he or she left the police academy, they would have a copy of this.
- Q. Okay. And then if there were changes made to the Manual of Rules, were there inserts that were given to officers to put into the copies that they had, or were new -- whole new copies issued?
- A. In the 1950s, I really can't speak on that, but I can tell you today how we do things is, it would be a divisional notice.

If it was in the middle of the year, the chief would put out a divisional notice and say, "This change will be in effect immediately for the Manual of Rules and Regulations of the Division of Police. The manual will be updated annually."

And whenever that annually is -- it's not every January. It's, you know, on a 12-month cycle. Then the chief would update the manual, and he would push it out again as a whole.

Q. Do you know, in the 1970s, how the manual -- how



amendments to the Manual of Rules would be made?

A. No, I don't.

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Q. All right. So if you turn to the page that is Bates stamped at the bottom CLE 3229, it says Section 8, Chief of Police.

"The chief of police shall be the executive head of the Division of Police who shall direct all activities of the division and cause to be enforced all laws and ordinances."

Do you see that?

- A. Yes, I do.
  - Q. And just for the record, there is highlighting there that was not in the original copy that was produced to me, but somehow my highlighting got reproduced, but just for the record.

So the manual itself states that the chief of police is responsible for promulgating orders and enforcing all laws and ordinances; is that correct?

- 20 A. Yes, it does.
- 21 | O. And that's what it says in Section 83 as well?
- 22 A. Yes.
- Q. If you turn to page 3231, Rule 1, obedience to rules, Section 1.

It says, "All officers, members, and



- employees of the Division of Police shall familiarize themselves with these rules and obey them."
- 4 A. Yes. That is correct.
- Q. How -- so the city expected officers to follow the rules, correct?
- 7 A. Oh, yes.
- 8 Q. Okay. How did the city enforce this in the 9 1970s?
- 10 A. Well, in reviewing some of the documents that

  I reviewed, if there was an allegation or if

  someone didn't follow the rules, either on the

  recommendation of a superior officer or by a

  complaint, the chief would cause an investigation

  into that alleged rule violation, but that is a

  supervisor's responsibility.
  - Q. So prior to the violation of a rule, how did the city ensure that officers were following the rules?
- 20 A. Prior --

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- 21 | Q. Was it -- go ahead.
- 22 | A. No. Go ahead.
- Q. So you're saying that if a rule was violated, then certain disciplinary action would be taken?
- 25 A. Right.



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- Q. Okay. So how did -- besides giving officers a copy of the rules and saying, "Here, these are the rules," was there anything else that the department did to ensure that officers would actually read this and follow the rules?
- A. Right. I understand. Number one, they were required to read it. And they were required -- it's assumed throughout the division that you read this and you know what the rules are and what the laws are.

There was training within the different units as to the operational procedures. So if you came into the unit and they had -- and there was this list of rules and obligations, your training officer would explain those to you. You would follow those. And the oversight was by the superior officers.

- Q. And that was in the 1970s?
- 19 A. That was in the 1970s, and it continues today.
  20 That is the way it is today also.
- Q. Going back to the topic 1A that's in the notice --
- 23 A. Okay.
- Q. -- do you see any written rule in the Manual
  of Rules that specifically requires officers to



document or memorialize the developments in an investigation so that they become part of the official file?

- A. No, I don't.
- Q. Okay. Now, turning to document -- or Bates stamp

  CLE 3242, that is Rule 14?
  - A. Yes.

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So Rule 14.2 says, "The officer in charge Q. shall cause statements to be taken from persons brought to the unit in the course of criminal investigations and shall see that such statements are properly filed and preserved. These statements shall be available only to the officers and members of the Division of Police who are interested in the preparation of a particular case, to the officers of the county prosecutor, or the law department of the City of Under no circumstances shall they be Cleveland. given or exhibited to any other person without the written consent of the chief of police."

What's your understanding of how that rule worked within the department in the 1970s?

A. How that rule worked in the 1970s, based on what is written here, is there was a separate unit that was called the statement unit. And there



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were city officers and employees in that statement unit.

And if a detective was required to obtain a written statement, they would take the person to that unit, and they would type it out on a typewriter and obtain that statement.

And then it was part of the investigative file, which was turned over to the prosecutor's office as part of that file.

- Q. And the statements -- where were the statements kept, the typed statements?
- A. Well, I can tell you that the statement unit still exists today in our building, which I believe was built in 1976. And there is a statement unit that houses all the statements throughout the division.
  - Q. Okay. So they keep the statements there?
- 18 A. They keep them there, and investigators have them
  19 in their -- in their case files also.
  - Q. And officers were expected not to give the statements to anyone, other than the officers who were involved in the case or the county prosecutor or the law department?
  - A. Correct. Unless they had written consent from the chief of police.



- 1 | O. Where does it say that?
- 2 A. It says it in Rule 14 at the end of number 2.
- 3 "Under no circumstances shall they be given
- 4 or exhibited to any other person without the
- 5 written consent of the chief of police."
- 6 Q. Do you know what was the purpose of that rule?
- 7 A. No, I don't.
- 8 Q. Does that rule still exist today?
- 9 A. No, it doesn't.
- 10 | Q. Do you know why not?
- 11 | A. No, I don't.
- 12 | Q. Okay. Do you know why the rule was changed?
- 13 | A. No, I don't.
- 14 O. If you turn to page CLE 3264, Rule 42 states,
- 15 "Officers and members shall, at the end of their
- tour of duty, advise the relieving officers and
- members of all important police business
- transacted during that tour of duty and of all
- 19 unfinished police business in their jurisdiction.
- 20 They shall familiarize themselves at the
- 21 commencement of their tour of duty with all
- 22 important police business transacted since their
- 23 | last tour of duty and all unfinished police
- business within their jurisdiction."
- 25 What is your understanding of how that rule



worked in the 1970s? What did this rule require officers to do?

A. Well, my understanding, this rule or some iteration of this rule still is in effect today. So I can tell you that before we would leave, as an officer or superior officer, if anything unusual took place in your area of responsibility, your zone, or the area that you were to patrol that you think may affect the officers that are relieving you, that you should talk to them and tell them kind of as a heads-up.

"I want to give you a heads-up. This is what is going on," such as -- you know, we get off at 3 o'clock, but at 5 o'clock tonight, there is going to be a parade downtown in your zone.

So that's the way it's done today, and that's the way I expected that it was done in the 1970s throughout law enforcement, that they would communicate what took place during their day, anything of any significance, be on the lookout for maybe a suspect or a stolen car or something like that.

Q. So let's take, for example, detectives who are assigned to investigate a homicide. And we're talking about in the 1970s.



There may be more than one team of detectives that were assigned to investigate a case, right?

A. Correct.

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Q. And so there may be a team, you know, a partner pair of detectives who were assigned to investigate a case during a day shift and then also another team or pair of detectives assigned to investigate during the night shift.

Is that fair to say?

- A. That is.
- Q. Okay. And so this rule, Rule 42, would require the pair, you know, who were working on the case throughout the day to, before they left, make sure that the next pair of detectives working on that case would know what it is they had done on that investigation and what there was left to do, for instance?

MR. FUNK: Objection.

- Q. Is that fair to say?
- MR. MALLAMAD: You can answer.
- A. It would be. The way things are done is,
  usually, one team of detectives is the primary.
  And that's the way it was in the '70s. They are
  the primary investigative team.

If there was a request -- and a lot of --



even these requests are documented.

If there was a request, if they work day shift, they could give a request to the second shift, afternoon shift, and say, "We need to speak with Mrs. Jones. She doesn't get home from work until 6 o'clock. You guys working 4 to midnight, could you go talk to Mrs. Jones and ask her the following questions?"

So, historically, there's only one primary set of investigators, one set of detectives that primarily investigates.

Very complicated cases, they do use more than one team, but, historically, it's just been one team.

## BY MS. WANG:

- Q. Okay. So the primary set of detectives could ask another set of detectives who are coming on the following shift to do certain tasks in the case?
- A. Yes.
- Q. And if those -- the second set of detectives did complete whatever task it was that the first set of detectives had asked them to do, were they expected to communicate that information to the primary set of detectives when they're done with their shift?



- 1 A. Yes.
- 2 | Q. Okay. Rule 66, which is on page 3273 --
- 3 A. Okay.

Q. -- says, Section 1, "Officers and members prosecuting persons charged with a crime shall thoroughly familiarize themselves with all the facts and details concerning the case so that all of the evidence may be properly presented to the court."

What is your understanding of what this rule required officers to do in the 1970s?

- A. My understanding is that -- really, just what it says. It's not a suggestion. It's a -- it's a shall. It's an order that they be familiarized with all the facts and details and that all the evidence is properly presented to the prosecutor's office for presentation to the court.
- Q. Okay. So did this rule require officers to familiarize themselves with the evidence in the case just prior to trial in preparation for trial or like throughout their investigation?
- A. No. The way I read it and the way it's done today -- and I can tell you, being a policeman for 31 years, historically, when you're assigned



- a case, you know the intricacies of that case as it's going on, not just for -- not just before you go to trial.
- Q. And were you -- you were a detective at some point?
- 6 A. I was.
  - Q. And so you considered it your responsibility to know what all the facts were in the case as you were investigating it?
- 10 A. Yes.

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- Q. And you would keep yourself apprised of what facts were learned by -- you know, may have been learned by other detectives or other investigators in a particular case?
- 15 A. Yes.
  - Q. And why did you consider it your -- part of your duty to make sure that you were apprised of all the facts in a particular case that you were investigating?
  - A. Well, number one, it was our duty. It's the law.

    It's our duty. And that is what the system is

    based on is to gather all the facts as we know

    them and present them to the prosecutor.
- You know, in this rule, it says, "Officers and members prosecuting persons." You know, we



1		don't prosecute people. We're the gatherer of
2		facts, and that is the prosecutor's job to decide
3		whether they go forward with the prosecution.
4	Q.	And you gather facts to present to the prosecutor
5		so that they may prosecute; is that correct?
6	A.	Facts, anything, things that aren't based in
7		facts. Your job is to present everything. Any
8		rumor, innuendo, tip that goes nowhere. Your
9		job is to present that and let them make that
10		determination.
11	Q.	When you were a detective, did you consider it
12		your or did you make it a practice to apprise
13		yourself of all the facts known about how a
14		particular crime occurred before interviewing
15		witnesses potential witnesses to a crime?
16		MR. FUNK: Objection. You can
17		answer.
18		THE WITNESS: No, no. That I
19		would have to say that was on a case by
20		case basis, and it was kind of up to that
21		particular detective and whatever the case
22		was before you would decide exactly how you
23		wanted to proceed with that case.
24		I can give you an example. If
25		there was something that happened immediate



1 and there was witnesses there, it's always 2 a good practice to interview people right 3 away. Things are a little fresh in their 4 5 minds, but we've interviewed people months 6 and years after cases have taken place, 7 because facts have come to light. 8 There really isn't one -- I quess 9 if you're looking for a standard operating 10 procedure, exactly how to go about it, I 11 don't think there -- that one exists. 12 BY MS. WANG: 13 In the 1970s, you mentioned that the practice O. 14 was to have a pair of -- if there were -- there 15 would -- in terms of a homicide, investigation of 16 a homicide in the 1970s, there would have been a 17 primary set of investigative detectives; is that 18 correct? 19 Α. Yes. 20 Now, was it expected, you know, under the rules Q. 21 or the policies or procedures of the department, 22 that the primary set of investigating detectives 23 would read the reports or form 10's or what have 24 you that were created by any other detectives or

officers in the case, you know, once they came



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- A. Yes. That was expected.
- Q. Rule 71 on page 3274 simply states in Section 1, "Officers and members shall familiarize themselves with all general orders issued by the chief of police."

And then number two basically says, if there were orders issued in their absence, they would be expected to know them after they came back?

- A. Yes. That is still in place today.
- Q. And members of the department were expected to follow that rule, right?
- 13 A. Yes, they were.
  - Q. Now, page 3277, Rule 77, Section 1, states,

    "Officers and members shall report on all matters

    referred to and investigated by them. Such

    reports may be either verbal or written, as the

    officer in charge may direct."

Were -- so written reports -- were the written reports just form 10's in the '70s, do you know, or was there some other kind of form?

A. Well, there were form 10's. There were form 1's, which is a written documentation of -- form 10's are investigative follow-up reports. Form 1's are informational reports that any officer can



1 do.

If I was -- we knew there was a crime that was committed and I was working a particular zone and I received information about that crime, I would type a form 1 and give that to the investigator.

So anyone can do a form 1. Follow-up investigations require a form 10.

- Q. Okay. In a particular case?
- 10 | A. Yes.
  - Q. How would verbal reports on the progress of an investigation be documented?
    - A. The way they're documented today is, some of them are documented in a daily duty report, an assignment that the supervisors are required to fill out every day.

If you're the sergeant in the homicide unit and I brief you, an overview, "Sarge, today, we did A, B, C, and D," you would just put in your daily duty report, "Conferred with Detective Jones, who stated they conducted follow-up investigations on this case," very broad, very generic.

If it was something specific, they would document it in that report. We're all required



- 1 to do a daily duty assignment.
- 2 | Q. And that includes detectives, too?
- 3 A. Pardon me?
- 4 | 0. That includes detectives?
- 5 A. Oh, yes.
- 6 Q. And that is today. That is the requirement
- 7 today?
- 8 | A. Yes.
- 9 Q. Was there a requirement for detectives to do daily duty reports in the 1970s?
- 11 A. I don't know if there was, and I didn't --
- don't recall seeing them in any of the responsive
- documents, but that is the -- today and the 30
- 14 years plus that I have been on the job, that is
- the number one police 101 bit of administrative
- work that you're taught from day one you're in
- the academy, to document what happens during your
- 18 shift.
- 19 Q. And where are those -- today, where are those
- 20 daily duty reports kept for --
- 21 A. Today, they're -- excuse me. Go ahead.
- 22 | Q. -- for detectives?
- 23 | A. They're kept in our inspection unit.
- 24 Q. And how long are they retained?
- 25 A. I don't know what the -- what the retention



- schedule is. I couldn't tell you, but whatever the retention schedule is, we follow it.
  - Q. So the daily duty reports -- they're not kept in specific case files, are they, like there -- because they might cover a lot of things that don't have to do with a particular case?
- 7 A. Correct.

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- 8 Q. So I just want to make sure I understand. The 9 requirement today for what goes into a daily duty 10 report is anything that an officer does during 11 his shift?
- 12 A. Yeah. Specifically, today --
- 13 | O. Yes.
- 14 A. -- I will have my starting time, what I did
  15 today, and my completion time, what I did today.
  16 If I'm here for 8, 10, 12 hours, however long
  17 I'm here --
- 18 Q. It won't be 12 hours.
- A. -- it's going to be -- it's going to be one line.

  If I was a uniformed officer and I answered 15

  calls for service, parking violation, domestic

  violence, it'll all be documented in that report.

So they vary. They're not -- it's just what did you do today, and we are taught early on to put any significant items in there.



- 1 Q. Okay. And how long are they, usually? Just one
  2 page?
  - A. They're one page.

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- 4 Q. Okay. Does -- is the supervisor supposed to sign off on them?
  - A. Yes. Both -- if you're -- yes. The supervisor signs off on them. It is an accounting of your daily duty. You sign it. Your partner signs it. Your supervisor reviews it, and they sign it.

You could go an entire shift without having any face-to-face discussion with your supervisor. So he or she could come in the next morning, look at it, this is what I did yesterday, maybe ask you a question about it or whatever.

If not, it's just -- it's like our -- you know, our time would be -- you know, our timecard. We're tracking exactly what you did.

Q. Okay. Rule 85. It's on page 3281. It states,

"Officers and members shall have in their

possession a memorandum book, in which they shall
record information necessary for the performance
of their duty."

Do you know what this memorandum book was in the 1970s?

A. In the 1970s, there was -- throughout law



enforcement, officers had a memo book. And what it was, it was -- if you were walking a beat or you were working, you would jot down things on that book as to what you were doing, kind of like a duty report.

And then the supervisor could come up to you and say, "Let me see your memorandum book," and he or she would initial it, or if something significant happened, the boss would tell you, "Put that in your memorandum book," and then they would initial it.

That is how it was. It was a little more formalized. We do not have memorandum books today. We have what we call run sheets.

And, basically, a run sheet, if you see any officer today working, there is paper like this folded, and they usually have it in their pocket. And they just jot things down.

If the police radio gives you an assignment to respond to 123 Main Street for a parked vehicle, you write that down. You write the disposition down.

And then you transpose that onto your daily duty report, but that is all -- that is all that is. It's -- the daily -- the run sheets, I have



- had them. I have done it. I still do it. You know, you get rid of them at the end of the day.
  - Q. So there is no rule -- today, there is no rule that requires officers to keep their run sheets?
- 5 A. No. There is no rule.
- Q. And officers are allowed to dispose of their run sheets?
- 8 | A. Yes.

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- 9 Q. And in the 1970s, officers were allowed by
  10 department policy to dispose of their memorandum
  11 books?
  - A. I don't believe so. I believe the memorandum book was a little more formal, because it was issued by the Division of Police. And it was usually in a leather case.

It would almost look like a reporter's notebook. They would flip it over, and they would jot things down in that -- in that book --

- 20 Q. Okay.
- 21 A. -- for the officer's supervisor to review.
- Q. What written policy required the -- what written policy required officers to turn in their memorandum books?
  - A. I don't know.



- Q. Did you see any written policies or rules or regulations in your review of the documents in preparation for your deposition here today that required officers in the 1970s to keep their memorandum books?
- 6 A. No, I did not.
  - Q. And did you see any memorandum books of any of the defendant officers in this case in your preparation for your deposition here today?
- 10 A. No, I did not.
- 11 | Q. Have you ever seen a memorandum book?
- 12 | A. Yes.

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- 13 | Q. When did you last see one?
  - A. I couldn't tell you exactly when, but I saw them when I was a rookie policeman when I came on the job. I came on in 1985, and some of the men and women that broke me in on the job were hired in the '60s.

And, you know, we would have these run sheets, and they would say, "Oh, we used to carry these, you know. Now we carry run sheets."

So yeah. I mean, I remember seeing them.

Like I said, the men and women that trained me

were hired in the '50s, '60s, and '70s. So, you

know, customary to say, "Kid, this is the way we



- did things now, and this is the way we do things."
  - Q. And so when you started, you didn't --
- 4 A. No.

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- 5 Q. You did not have a memorandum book when you started?
- 7 A. Run sheets. No memorandum book.
- Q. Did you know any of the defendant officers in this case?
- 10 A. No, I did not. Let me -- no. Let me -- let me
  11 back up. I'm sorry. Jerry Englehart.

I didn't know him when he was on the job, but after he retired, he was -- he worked for the county at the grand jury. And I knew him from there.

I mean, I knew he was a Cleveland policeman, but when he was on the job, I never had the opportunity to work with him, or I'm not exactly sure when he retired, but he was, I guess, the scheduler for the grand jury. And when I would testify, I would see him, and we would say hello.

- Q. Did you know him any more specifically than just --
- 24 A. No.
  - Q. -- through your dealings with the grand jury?



1	Α.	No.
2		MR. FUNK: Is this a good time for
3		a break?
4		MS. WANG: Sure.
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6		(Thereupon, a recess was had.)
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8		MS. WANG: Let's mark this as
9		Exhibit 3.
10		(Thereupon, Deposition Exhibit 3
11		was marked for purposes of identification.)
12		BY MS. WANG:
13	Q.	So the court reporter has handed you what has
14		been marked as Deposition Exhibit 3. And it is
15		another version of the Manual of Rules. It is
16		Bates stamped Jackson 4682 through 4755.
17		This one, I believe, was obtained from the
18		Cleveland Public Library, this version.
19		Did you review this one in preparation for
20		your deposition?
21	Α.	Yes.
22	Q.	Did you see any noticeable differences between
23		this version of the Manual of Rules and the other
24		one?
25	Α.	No, nothing that I can recall. Noticeable



- 1 difference? I don't know what --
- 2 | Q. Well, would it be fair to say that Deposition
- 3 Exhibit 2 has a few rules that were updated after
- 4 1950, whereas this version, Deposition Exhibit 3,
- 5 appears to have been published in 1950 without
- 6 any revisions?
- 7 A. Yes. That would be fair to say.
- 8 Q. And the couple revisions that were in Deposition
- 9 Exhibit 2 were from later in the '50s; is that
- 10 | fair?
- 11 A. Yes, they were.
- 12 | Q. Okay. Do you know when this Manual of Rules was
- published, the one that's Deposition Exhibit 3?
- 14 A. No, I don't.
- 15 Q. Okay. It says 1950 on the cover?
- 16 A. Right.
- 17 | O. Is it fair to say that it was published in 1950?
- 18 A. I could assume that, yes.
- 19 Q. And it would have been in effect in 1975?
- 20 A. This or some iteration of this, yes.
- 21 | Q. Okay.
- 22 | A. It's still in effect today, the Manual of Rules.
- 23 So I could make that assumption, yes.
- 24 Q. Now, when the police chief promulgated the Manual
- of Rules, the 1950 Manual of Rules, did he have



to get approval from anybody else, like the mayor or the director of public safety or anyone, prior to promulgating the Manual of Rules?

A. I can tell you today. Everything -- we operate with a paramilitary chain of command. Anything that we do goes up to the next person for review.

So in this case, the chief answers to the safety director. The safety director answers to the mayor.

By looking at this, I would assume, yes. The mayor is the final authority in the division -- in the city, just as he is today.

So everything goes up the next level until it stops. It can either -- it can stop with the chief of police as a divisional notice, but something as important as this, I would assume by looking at this, since his name is on it, it probably did go up to the mayor's office for final approval.

- Q. Does the mayor have the power to veto any of the rules?
- A. Yes. The mayor can do -- yeah.
- Q. Okay. So is the chief of police -- in 1975, was the chief of police the final policy maker for rules in the department?



A. Yes, he was. And everything -- yeah. He is the final policy maker by the charter, but, obviously, the director of public safety and the mayor have final authority.

If they felt something was not appropriate or something was missing, they would recommend to the chief, you know, "Maybe this needs to go in."

And we've changed our uniform, or we've done something like that, but all the final decisions do rest with the chief. The chief is appointed by the mayor in the City of Cleveland.

Technically, the mayor's got final say on everything.

Q. If the director of public safety or the mayor don't have any -- well, you gave an example. You know, the public -- the director of public safety or the mayor might make a recommendation to the police chief as to how a specific rule or order should look.

Was the police chief free to reject those recommendations or suggestions?

A. I can tell you today, Chief Williams has that authority. He can talk to the mayor and say he doesn't believe that this is in the best interest of the Division of Police and the citizens that



1 we serve. 2 In the 1950s and the 1970s, I would imagine 3 that the chief did have a lot of input into that, 4 exactly what went into that manual. 5 The mayors have enough confidence to appoint 6 somebody to be the chief of that division. 7 expect them to be able to run it. 8 Okay. And part of running it includes having Q. 9 final say over the rules that would govern the 10 department? 11 Α. Yes, yes. 12 Now, let's take a look at --0. 13 MS. WANG: Let's mark another one. 14 (Thereupon, Deposition Exhibit 4 15 was marked for purposes of identification.) 16 (Thereupon, Deposition Exhibit 5 17 was marked for purposes of identification.) 18 BY MS. WANG: 19 Q. Deposition Exhibit 4, which the court reporter 20 just handed you, is Bates stamped CLE 2983 21 through 3092. And Deposition Exhibit 5 is 22 3093 -- CLE 3093 through 4172. 23 Deputy Chief, did you review these 24 documents in preparation for your deposition? 25 Α. Yes, I did. Uh-huh.



1		THE WITNESS: These are the GPOs
2		that were in that yes, I did.
3		MR. MALLAMAD: Answer her
4		question.
5		THE WITNESS: Yes, I did.
6		BY MS. WANG:
7	Q.	Have you had a chance to look at that?
8	Α.	Yes, I did.
9	Q.	Now, this Deposition Exhibit 4 says at the top,
LO		"Draft Copy, Manual of Duties and Procedures,
L1		with Index of GPOs, 1969 to 1974, Cleveland
L2		Police Department, October 1974."
L3		And in the note, it says that this manual
L4		is the first draft of an updated version of the
L5		Cleveland Police Cleveland Division of Police
L6		duties and procedures complied by Inspector Lloyd
L7		Gary in 1969.
L8		And, essentially, it says and I won't
L9		read the whole thing, but, essentially, it says
20		that it is a draft copy. And so it's not in the
21		complete format that it would exist in the final
22		copy, but they're giving it out to the police
23		officers so that they will have it.
24		Is that fair to say?
) E	7	Vog it is



- Q. And then it appears this general police orders that's Deposition Exhibit 5, 1969 to 1974, is what was attached with this draft copy of the Manual of Duties and Procedures?
- 5 A. Yes.

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- Q. Okay. And Deposition Exhibit 5, general police orders dated 1969 to 1974, is this a complete copy of the general police orders that were in existence in 1969 to 1974?
- A. This is everything that was located and produced.

  I could say that if there were any other orders,

  I didn't have a chance to review them, but this

  was everything that was located during that time

  frame.
- Q. And, in fact, there is a -- so the Bates numbers that begin with CLE, those were stamped -- those were page numbers that were stamped by the city, but there is a separate set of page numbers. If you turn to the second page, it says G1 at the bottom.
- 21 A. Oh, yes.
- Q. Okay. And then if you look at all the page numbers, it goes from G1 to G79. The last page is G79.
- 25 A. Correct.



- Q. And all the pages are there, right? G1 through G79?
- 3 A. Yes.
- Q. Now, do you know what was the purpose of the manual -- going back to Deposition Exhibit 4 --
- 6 A. Okay.
- Q. -- what was the purpose of this Manual of Duties and Procedures, with the index of GPOs, do you know?
- 10 A. This was a manual that was produced to provide
  11 guidance to the men and women of the Division of
  12 Police about how to perform their duties and what
  13 procedures to follow during the performance of
  14 those duties.
- Q. There is a reference to the -- sorry. Strike that.

And so it's dated October 1974. Is it your understanding that this document with the GPOs was distributed to officers at that time?

20 A. Yes.

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- Q. And it would have been distributed to all officers in the department?
- 23 A. Yes, it would have.
- Q. And do you know where this copy was found?
- 25 A. No, I don't.



- Q. What about the general police orders, Deposition Exhibit 5? Do you know where this was found?
  - A. I believe that was located in our police museum.
  - Q. Okay. If you'd turn to page 3,000 in this Deposition Exhibit 4.
  - A. Okay.

Q. All right. So there is a section on writing reports. And the general rule, Section A, governing written reports says, "Anything that requires immediate police action or which will necessitate future action by police or other units of government should be reported in written form by the officer receiving the complaint or learning of the incident or information."

What was your understanding of what this rule required?

A. My understanding of this rule is that any incident either immediate or that will require police action needs to be documented in what I described earlier as either a form 10 or an offense incident report, which back in the -- when this was written, they were called RC1 reports.

And it is an officer's first observation of what took place. It's very generic, date,



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time, location, witnesses. And that's how it's
documented.

So that is my understanding, that our job requires the documentation of action that is taken immediate and for future investigative purposes.

Q. How were officers -- besides -- I'm sorry.

Strike that.

Were officers trained on how -- strike that.

All officers in the department got a copy of this manual in October of 1974; is that correct?

- A. I would assume they did, yes.
- Q. Was there any instruction given to officers about anything that was in the manual for the general police orders when they received it?
- A. I don't know if there was additional instruction given in 1970.
- Q. And if there was instruction, it would be reflected in the training documents that we received in this litigation?
- A. It may -- it may have been reflected in that.

  This is a requirement. When you're given a general police order, when you're given -- provided a policy document, it is understood that you will know the document and follow the



- 1 document. That is what it's there for.
- 2 | Q. So you're expected to read it, right?
- 3 A. Yes, you are.

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- Q. Is there any explanation or training given to officers, besides expecting them to read it?
  - A. No, there is not, but the expectation is, you're expected to read it. If you don't understand something -- and that is the way it is today -- you need to go to your supervisor, and that particular section or policy that you don't understand will be explained further to you.
  - 0. Is that documented somewhere?
- 13 A. Pardon me?
  - Q. How is it -- how do officers know that that's what they're to do, that they're to ask questions if they don't understand something that's --
  - A. Well, today, we put it in our general police orders. And in the last 31 years, since I've been a police officer, it says you're to know this, particularly, orders that are -- general police orders that we update every year. You are expected to understand this order.

They read it at roll call for seven days. It says right in the instructions: "Supervisor shall read this order at roll call for seven



- days. Anyone that doesn't understand it, you
  will assume to have understanding of this order.

  If not, you are to talk to your supervisor."
  - O. Was that done in 1970?
- 5 A. I don't know if it was.

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- 6 Q. That is your experience since you joined the 7 department?
- 8 A. That is my experience, yes.
  - Q. All right. Turning to 3010, page 3010, there is a memo here on this page and the next page about the message reporting report system.

Do you know how that process worked?

A. Yes. This was before -- long before we had the technology that we have today. Our reports were called in to a central reporting system by telephone. You would dictate your report almost to like a stenographer type.

And that is what that was. So -- and then if there was a message to be left, if they were overloaded or they were busy, they could call in and leave a message.

"I got this incident. I need to report it.

I need to get it documented. I will be on shift tomorrow. Get ahold of me, and I will make that report."



- A vehicle was stolen, or a business was broken into, something along those lines.
- Q. Was this just for a patrolman, or did detectives use this, too?
- A. In my experience, it was just for the patrolmen.

  When I came on, we actually still had some of

  this in 1985. And when I first started, we would

  call in our reports on a telephone and dictate

  exactly what took place.
- Q. Did you also -- you know, at the end of your shift, did you also write up your report, or was a written report generated from the system?
  - A. A written report was generated from that system, yes.
- Q. And so you were expected to dictate your report and do this verbally for any report that you had --
- 18 A. Yes.

- 19 Q. -- as opposed to writing it down yourself?
- 20 A. Yes, we were. Yes.
- Q. Okay. Were you ever -- were you ever aware of detectives using this message recording system?
- A. In my experience, I was not. And when I became a detective, we didn't use that. We did everything on form 10's and form 1's.



- Q. And then if a written report was generated from
  the message recording report system, did you then
  have an opportunity to review it to make sure
  that it was written correctly?
  - A. In my experience, no. There was a supervisor at the report center. They would review it for accuracy, and they would have the final say-so.
  - Q. How would they know what it was that you knew -I mean, the supervisor wouldn't have been there
    for whatever it was that you were reporting,
    right?
- 12 A. Right.

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- 13 Q. So how would they know whether it was accurate?
- 14 A. Because I dictated it. So they would -- they
  15 would just review what I told them.
- 16 Q. Oh, the recording, the actual --
- 17 A. Yes, yes.
- 18 Q. All right. The page that is Bates stamped CLE
  19 3020 --
- 20 A. Okay.
- Q. -- there is a section on the officer's notebook.

  It says, "Type of notebook. A regular bound

  notebook is preferred with entries made in ink;

  one, it provides a chronological personal record

  of duties, findings, and occurrences; two,



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reduces the possibility of lost pages and contentions by the defense that pages have been removed or newly inserted."

Then it gives three reasons for the purpose of the notebook.

Is this the same thing as the memo book that was mentioned in Rule 85, the Manual of Rules?

- A. No. I don't believe it is. This is a different type of notebook that they were required to keep.

  And it looks like it was a little more formal as to what took place.
- Q. And was this notebook issued by the department to officers?
- 14 A. I don't know.
  - Q. Do you know anything about what was required to be -- what officers were required to put into the notebook, besides what it says here?
  - A. No. I don't know what the -- you know, what the requirements were.
    - Q. Okay. So it says in the purpose section that the purpose is, one, to record details of all investigations; two, to serve as the basis for official reports; three, to refresh the memory of the officer/investigator.
      - A. In criminal cases, the notebook should be



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turned over to the county prosecutor to prevent its being used as an article of evidence by the defense attorney.

Was this rule followed?

- 5 A. Yes. I -- yes. That rule -- if it was in this, 6 you were expected to follow that rule, yes.
- Q. Were supervisors required to sign off on what was in the notebook?
- 9 A. I don't think so. And I don't -- I don't see it

  10 anywhere, unless it's documented somewhere in

  11 this document that they were required to do it

  12 under supervisory responsibilities.
- Q. Have you ever seen a notebook of this description?
- 15 A. No, I haven't.
- Q. The older officers who trained you when you first started, do you remember them ever having a notebook like this?
- 19 | A. No, I don't.

- Q. Do you remember there ever being any discussion within the department of a regular bound notebook like this?
- A. No, I don't. In the reviewing of this, I found this -- I had never heard of that.
  - Q. And were there any policies, rules, or procedures



- that required detectives to place their notebook or make a copy of it and place it into the official investigative file?
- A. It's stated right here that they were required to do that. They were required to turn it over to the county prosecutor.
- Q. Was there an official investigative file in the 1970s for each investigation?
- 9 A. For each investigation?
- 10 Q. Right.
- 11 A. Yes.
- 12 | Q. Okay. And there still is today, right?
- 13 A. Yes.
- Q. And is there any written policy that required officers to turn in their notebooks and place them into the official investigative file?
- 17 A. No. I don't see any.
- Q. Was there any written policy or procedure that
  required officers to turn -- to place their -- a
  copy -- to either place their original memo book
  or a copy of it into the official investigative
  file?
- 23 A. No. I don't see it.
- Q. If you'd turn to page 3064.
- 25 A. Okay.



Q. So there is a number of pages here that go to 3069, detailing the law on -- what appears to be the law on searches of a person and of vehicles and so forth.

Do you see that?

6 | A. Yes.

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- Q. Okay. Was there any instruction given to officers on any of these topics, besides the fact that they just got a copy of this document?
- 10 | A. In the 1970s?
- 11 | O. In the 1970s.
- 12 A. In the 1970s, I'm not aware if there was any additional, no.
- Q. In this Deposition Exhibit 4, the document
  here, were there any -- do you see any policies
  or procedures relating to the requirement of
  officers to document developments in an
  investigation so that they would be maintained
  in an official investigative file?
  - A. I think that -- I see documentation where it says that they shall have documents and maintain them, but to be exact, where it says putting them in an investigative file, no, I don't see that.
  - Q. In the document that has been marked as

    Deposition Exhibit 4, is there any policy that --



- is there any policy relating to the conducting or documenting of photo or in-person lineups or show-ups?
- 4 A. I have to go through this. No, there is not.
- 5 | Q. In the document -- go ahead.
- 6 A. No. Go ahead.
- 7 Q. Are you done?

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- 8 A. Yeah. I'm done.
- 9 Q. In that document, Deposition Exhibit 4, is
  10 there any policy or procedure relating to the
  11 use of informants or witnesses during a criminal
  12 investigation, including disclosure of such
  13 witnesses and payments, gifts, promises, and
  14 threats made to such witnesses?
  - A. Not in the documents provided.
    - Q. In the document before you, Deposition Exhibit 4, is there any policy or procedure or rule or regulation relating to the conducting and documenting of interrogations or interviews of suspects and witnesses, include juveniles?
    - A. No. I don't believe there is.
- Q. In the document marked as Exhibit 4, is there
  any policy or procedure or rule or regulation
  relating to the writing, preserving, and
  destroying of police reports,



- investigator/detective notes, memos, and
  exculpatory evidence, including the course of -during the course of an investigation?
- 4 A. In this document, there is not. That is -- in this document, no.
  - Q. Okay. And in this document, Deposition Exhibit
    4, is there any policy, procedure, rule, or
    regulation relating to the discipline, training,
    or supervision of detectives?
- 10 A. Yes. In this document, there is.
- 11 | Q. What page is that on?

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- 12 A. There is documentation regarding the duties and
  13 procedures of members of the Division of Police,
  14 but there is no documentation as to exactly what
  15 their training is, but there is a guide here as
  16 to what they're supposed to do.
  - Q. Just identify the page for me.
- A. Well, there is numerous pages, but I can point
  to -- on page 3060, it has what you would do -page 73, Bates number 3060, what you would do in
  the event that there was a felony arrest. So
  that is a guide there as to exactly what the
  detectives would do.
- Q. Okay. Going back to Deposition Exhibit 1 -- or not 1 -- 2 -- sorry -- is there anything in that



1 Manual of Rules that relates to the conducting -2 or the conducting and documenting -- strike that.
3 Is there anything in Deposition Exhibit 2,
4 the Manual of Rules, relating to conducting and

the Manual of Rules, relating to conducting and documenting photo or in-person line-ups or show-ups?

A. No, there is not.

- Q. Is there anything in Deposition Exhibit 2, the Manual of Rules, relating to use of informants or witnesses during a criminal investigation, including disclosure of such witnesses and payments, gifts, promises, and threats made to such witnesses?
- A. I would point to Rule 104. "No member of the Division of Police shall directly or indirectly give, offer, solicit, or receive or be in any manner concerned in giving, offering, soliciting, receiving any assessment, subscription, or contribution of money or any other thing of value to or for any ranking officer to include or persuade such officer to resign/retire for the purpose of accelerating a promotion or a promotional list."

Basically, that covers that in our -- in the law and in our rules and regulations, that will



	JACKS	SON vs CITY OF CLEVELAND 84
1		not be subject to any type of, I guess, financial
2		gain or gift to do anything that is contrary to
3		the law. So I think Rule 104 would cover that.
4		That rule is still in effect today.
5	Q.	Okay. Any other rule in the Manual of Rules
6		that covers the topic of making payments, gifts,
7		threats, or promises to witnesses?
8	A.	Rule number 99. "Officers, members, and
9		employees shall violate no laws of the United
10		States, the State of Ohio, no ordinances of the
11		City of Cleveland. They shall not willfully
12		disobey any lawful order issued to them by a
13		superior officer."
14		I think Rule 99, Section 1, would cover that.
15	Q.	Okay. So an officer is supposed to know, based
16		on reading Rule 99, that he is not to make any
17		promises, threats, gifts, payments to witnesses?
18	A.	Well, that is against the law. So I would assume
19		that they would understand that.
20	Q.	Okay. But it's not spelled out in the Manual of
21		Rules, correct?
22		MR. FUNK: Objection.

MR. MALLAMAD: Objection. You can

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answer.

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BY MS. WANG:



1	Q.	It doesn't specifically say anything about
2		threats or promises to witnesses in Rule 99,
3		does it?
4	Α.	No, it does not say that. It just says obey the
5		law.
6	Q.	Okay. In the Manual of Rules that has been
7		marked as Deposition Exhibit 2, is there any
8		rule relating to the disclosure of exculpatory
9		evidence, including, but not limited to,
LO		impeachment material to criminal defendants,
L1		defense attorneys, or prosecutors?
L2	Α.	There isn't. I would still answer that as a
L3		follow-up and say I would still point to that
L4		Rule 99, that they should not violate the law
L5		of the state, the city.
L6	Q.	When you're familiar with the case Brady
L7		versus Maryland, correct?
L8	Α.	Yes, I am.
L9	Q.	Okay. And what's your understanding of what it
20		obligates officers to do?
21		MR. FUNK: Objection.
22		MR. MALLAMAD: Objection.
23		Go ahead, Chief. You can answer.
24		It's not a 30(b) subject, but if you can

answer in a -- to the best of your ability.



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1 Plus it calls for a legal analysis.

- A. I'm limited familiar with it, that their officers are required to provide any and all evidence and reports to the prosecution so it can be determined as to the value of what it -- the value of that evidence is in a court proceeding.

  BY MS. WANG:
- Q. When Brady versus Maryland was decided in 1963, was there any notice or anything given to any of the officers in the department so that they would know that this decision had come down?

MR. FUNK: Objection.

- MR. MALLAMAD: Objection. You can answer.
  - A. Yeah. In 1963, I couldn't answer that.
  - Q. Okay. At any time between 1963 and 1975, were officers informed of what their obligations were under Brady versus Maryland?
  - A. I can't answer that to that date. I can tell you that we are notified today. I can tell you how we do it today in any Supreme Court decision that relates to law enforcement or how we do our job. Those are promulgated by Chief Williams through the law department.
  - Q. In what kind of notice?



- 1 | A. Usually, a divisional notice.
  - Q. Okay. Did you see any divisional notices from the 1970s, relating to Brady versus Maryland?
  - A. No, I did not.

- Q. Did you see any written policies whatsoever, whether it was a rule from the Manual of Rules or a general police order or a departmental or divisional notice, relating to officers' obligation to disclose exculpatory evidence?
- A. No, I didn't.
  - Q. And so your belief is that officers in the 1970s would read Rule 99 and think that they were required to disclose exculpatory evidence to prosecutors and criminal defendants?

MR. MALLAMAD: Objection. It really is outside of the scope of the deposition, but, Chief, if you have a response, you can respond.

A. I can tell you that -- I can't tell you what they were thinking or assuming then, but I know the standard that for the last 31 years that we've been held to is that you are required to know this and follow this.

And when we come on this job to be police officers, it's unique, because we do take an oath



1 to uphold that law, the laws of the state and the 2 federal government and the city. 3 So I think that is all-encompassing, but that particular -- the way you worded it in 4 5 particular, I would have to say no, but my 6 assumption would be that everybody knew that they 7 had to follow the law. If that was the law, then 8 I assume it would be followed. 9 BY MS. WANG: 10 So you did not go to law school, right? Q. 11 Α. No, I didn't. 12 And police officers, most of them, are not Ο. 13 lawyers, correct? 14 Α. Yeah. 15 So would you agree that officers would need to Q. 16 get training or instruction of some sort to know 17 what the law is? 18 Well, I think -- I would agree, and I would agree Α. 19 that officers do receive -- officers do and 20 continue to receive training. And the basic --21 it's very elementary. Very basic police 101 is 22 that you know the law and you follow the law. 23 That is your profession, that you do know that. 24 Was there anything formal that is documented

from the 1970s? I don't know, but I do know



that the officers that -- they have supervisors that train them, teach them. They have senior detectives that would reiterate that to those officers.

And that is how I was trained also. My training was a little more formal, but in the '60s and '70s, I think it was a little more informal, but I still believe that it all goes back to this rule, to follow that, to follow the law.

Q. Okay. And so the only way that officers would know -- in the 1970s would know what the law required of them is if somebody else in the department told them?

MR. FUNK: Objection.

MR. MALLAMAD: Objection. That's not his testimony, but you can answer, Chief.

A. I don't -- I don't think it would be if somebody else told them. I think if -- I don't see any divisional notices that address that.

I know there was a document that we haven't located that was then put into a general police order.

If I remember correctly, I think it was at



1 the time Prosecutor John Corrigan, who sent a 2 letter to the then chief that said, "Make sure 3 you follow A, B, C, and D, as far as evidence." 4 And the chief took that and put that into a I don't believe I've seen the 5 divisional notice. 6 letter, but yeah. That's how they would --7 that's how they would be notified of it. 8 BY MS. WANG: 9 So officers would be notified by a divisional Ο. notice or if it was in a rule? 10 11 Α. In a rule. 12 In a general police order; is that right? 0. 13 Yes. Α. 14 Are there any other written forms that -- in Q. 15 which an officer would be informed of what the 16 law is? 17 No, not that I'm aware of at that time. Α. 18 And let's go back to the Manual of Rules for a Q.

second.

Deposition Exhibit 2, the Manual of Rules, do you see anything in there that relates to the conducting and documenting of interrogations or interviews of suspects and witnesses, including iuveniles?

Α. No. That would not be contained in the Manual of



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Rules.

Q. Is there anything in the Manual of Rules,

Deposition Exhibit 2, that relates to writing,

preserving, and destroying police reports,

investigator/detective notes, memos, exculpatory

evidence during the course of an investigation?

MR. MALLAMAD: I will object, because it's already been asked and answered, but go ahead.

THE WITNESS: As far as -- the answer to the question is no, with this explanation, that if -- it's not our determination nor a law enforcement officer's determination to decide what is exculpatory or not. That decision is made by the prosecutor's office.

So our job and our requirement is to follow the law and turn everything over to the prosecutor's office to make that determination.

## BY MS. WANG:

- Q. Where does it say that in the Manual of Rules?
- A. It says that -- I don't believe it's in the

  Manual of Rules, but I believe it says in the

  investigative process that any and all evidence



1 that you obtain is to be turned over to the 2 prosecutor's office. And I think we did reference it in one of 3 4 these other documents earlier that you had 5 highlighted. 6 Okay. And so what you're referring to is what we Q. 7 previously discussed? 8 Α. Yes. 9 Ο. Is there anything else that you're thinking of that is responsive to whether or not there is any 10 11 rules or regulations or policies on the writing, 12 preserving, and destroying of police reports, 13 investigator/detective notes, memos, and 14 exculpatory evidence? 15 No, there was not. Α. 16 You're referring to MR. MALLAMAD: 17 this Manual of Rules, Exhibit 2? 18 MS. WANG: Yes. 19 MR. MALLAMAD: Then I object. 20 It's been asked and answered as cited 21 previously. 22 BY MS. WANG: 23 The deposition Exhibit 5 -- actually, one last Ο. 24 question.

Is there anything in the Manual of Rules,



- Deposition Exhibit 2, that relates to the discipline, training, and supervision of detectives?
- 4 A. The discipline? Could you repeat that?
- Q. Discipline, training, and supervision ofdetectives.
- 7 A. No. To detectives specifically, no, there is not.
- 9 Q. Okay. The document that has been Bates stamped
  10 Deposition Exhibit 5.
- Okay. So let's take a look at -- well,
  actually, first of all, a background question
  about the general police orders.
- This is a book of general police orders from 1969 to 1974; is that right?
- 16 A. Yes, it is.
- Q. And these police orders were promulgated by the police chief, correct?
- 19 A. Yes.
- Q. Do you know why this particular set of police orders only covers 1969 to 1974?
- 22 | A. No, I don't.
- Q. Okay. There were police orders that existed prior to 1969, right?
- 25 A. Yes, there were.



- Q. And there were police orders that existed after 1974?
  - A. Yes, there were.
- 4 Q. If there had been police orders that -- strike that.
- 6 Let's take a look at page 3108.
- 7 A. Okay.

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- Q. So on page 3108, there's a Rule number 2-74. It says, "January 25th, 1974, Subject: Amendment to the Manual of Rules."
  - And it says, "To the Members of the

    Department by the Authority of James T. Conny,

    Director of Public Safety, the Manual of Rules of
    the Department of Public Safety, Division of

    Police, shall be revised as follows."
    - And then it gives what appears to be an amendment to the rules; is that right?
- 18 A. Yes. That's correct.
- Q. Okay. So it appears that the amendments to the Manual of Rules were issued in police orders?
- 21 A. Yes.
- Q. Was there any other way in which amendments to the Manual of Rules were issued?
- 24 A. No, not that I'm aware of.
- 25 Q. And if you'd just take a look at page 3110.



- 1 A. Okay.
- 2 | Q. Number 22-73 dated August 31st, 1973, says,
- 3 | "Subject: Procedure Before a Custodial
- 4 Interrogation."
- 5 And this rule has to do with the procedure
- 6 that officers are expected to follow, in terms of
- 7 giving a suspect their Miranda rights; is that
- 8 right?
- 9 A. Yes. That is right.
- 10 | Q. So this is the type of rule or policy that would
- 11 be promulgated per general police order?
- 12 | A. That's correct.
- 13 Q. Okay. Can you think of any other place that a
- rule relating to, you know, procedures during a
- 15 custodial interrogation would be given, besides
- in a general police order?
- 17 | A. In --
- 18 | O. In the 1970s.
- 19 A. No.
- 20 Q. It's not the kind of thing that would be in the
- 21 | Manual of Rules, right?
- 22 A. Right.
- 23 | Q. And it's not the kind of thing that would be
- 24 given by a divisional or departmental notice?
- 25 A. No. It would be in a general police order.



- Q. Okay. And if you'd just look at the number, it says number 22-73. So the 73 refers to the year
- 3 that the rule is promulgated, right?
- 4 A. Yes.
- 5 | Q. And they're given in order; is that fair to say?
- 6 A. Yes.
- Q. All right. So starting in January of a givenyear, you would start numbering the police orders
- 9 for that year 1 dash year?
- 10 A. Yes.
- Q. And then at the end of the year, it would be whatever the last one for the year would be?
- 13 A. That's correct.
- 14 | Q. Is that still how it's done today, the numbers?
- 15 A. No.
- 16 | O. No?
- 17 A. No. It's different today.
- 18 | Q. Okay. And if you'd turn to page 3112.
- 19 A. Okay.
- 20 Q. Number 19-73, dated July 18th, 1973, the subject
- 21 is pretrial discovery rights of defense attorneys
- 22 in court in criminal cases.
- Now, this one states, "To Members of the
- Department, in a letter to this department,
- 25 | County Prosecutor John T. Corrigan has defined



1		the legal rights of defense attorneys in court to
2		statements, reports, and other items in criminal
3		cases. His letter, as a part of this order,
4		shall be considered an integral part of criminal
5		case preparation procedures, and all members
6		shall comply with this provision. A copy shall
7		be forwarded to all divisions, districts, and
8		units."
9		And then what follows appears be the text of
LO		Attorney Corrigan's letter; is that right?
L1		MR. MALLAMAD: Objection. If you
L2		know.
L3	Q.	Well, take a minute to review it.
L4	Α.	Yeah. That appears to be the text of his letter.
L5	Q.	Okay. It says at the end, "Respectfully
L6		Submitted, signed John T. Corrigan"
L7	A.	Yes.
L8	Q.	"Prosecuting Attorney," right?
L9	A.	Yes.
20	Q.	All right. So
21		MR. FUNK: I'm sorry. What's the
22		Bates number on this?
23		MS. WANG: 3112, CLE 3112.
24		BY MS. WANG:
25	Q.	Now, in approximately the middle of the page, in



1		the first column, it says, "No police department
2		is required or shall give to the defense counsel
3		any and/or any court any record, paper,
4		statement, report, or tangible object of a
5		criminal case."
6		MR. MALLAMAD: Wait for the
7		question.
8		BY MS. WANG:
9	Q.	This letter from Attorney Corrigan was adopted by
10		the police department in a general police order,
11		right?
12	A.	Yes, it was.
13	Q.	In this police order?
14	A.	Yes.
15	Q.	And this police order was distributed to all the
16		officers in the department?
17	A.	Yes, it was.
18	Q.	And the officers, including detectives, were
19		expected to follow this order?
20	Α.	Yes.
21	Q.	It then says, "Under proper circumstances under
22		this rule, by application to the prosecuting
23		attorney and/or the court, the defense counsel
24		may be entitled to the following."

And then it gives a number of items. Number



- 1 6 is evidence favorable to the defendant. Do you 2 see that?
  - A. Yes, I do.

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- Q. Was there any explanation in any of the general police orders that you have here before you in Deposition Exhibit 5 of what evidence favorable to the defendant was?
- 8 A. No, there wasn't.
  - Q. Okay. Is there any other written document that you're aware of from the 1970s that explained what evidence favorable to the defendant was?
  - A. No, there is not.
  - Q. And then it says, "Exception to the foregoing.

    The foregoing does not authorize the discovery or the inspection of reports, memoranda, or other internal documents made by the prosecuting attorney or his agents" -- police departments or his agents" -- in connection with the investigation or prosecution of a case or of statements made by witnesses or prospective witnesses to state agents."
- 22 Do you see that?
- 23 A. Yes, I do.
- Q. So this rule set out in numbers 1 through 6 items that police officers were expected to give



## EDWARD TOMBA JACKSON vs CITY OF CLEVELAND

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1		to defense counsel, but witness statements were
2		excepted from that?
3		THE COURT: Objection.
4		MR. MALLAMAD: Objection.
5		BY MS. WANG:
6	Q.	Is that fair to say?
7		MR. MALLAMAD: Objection. You can
8		answer it to the best of your ability.
9		THE WITNESS: The foregoing does
10		not yes. That appears to be what it
11		says.
12		BY MS. WANG:
13	Q.	And officers were expected to follow this rule?
14	Α.	Yes. It was a law.
15	Q.	And it was adopted by the police department in a
16		general police order?
17	A.	Yes.
18	Q.	Is that still a rule that the police department
19		follows today?
20	A.	Yes. And I believe it's been expanded upon with
21		the rules of discovery, if I'm not mistaken, but
22		yes. Any and all information is to go to the
23		prosecutor's office.
24	Q.	Actually, that's not what this says, right? So
25		you're saying the rule today is that any and all



	JACKS	SON vs CITY OF CLEVELAND 101
1		information that an investigating officer
2	A.	Right.
3		MR. MALLAMAD: Hold on.
4		BY MS. WANG:
5	Q.	obtains today is to be given to a prosecutor,
6		right?
7	A.	Correct.
8	Q.	This rule says items 1 through 6 and 6 is
9		evidence favorable to the defense.
10	A.	Right.
11	Q.	may be given by application to the
12		prosecutor or the court may be given to the
13		defense counsel, except witness statements?
14	A.	Right. So the answer to your question
15		MR. FUNK: Objection.
16		MR. MALLAMAD: Objection. Go
17		ahead and answer.
18		THE WITNESS: Okay.
19		BY MS. WANG:
20	Q.	Is that your understanding is that your
21		understanding of what it says?
22	A.	That's my understanding of what it says. And the
23		answer to the question is is this in effect
24		today? The answer is no.



Okay.

- 1 A. This is not in effect today.
- 2 | Q. Okay. It was in effect in 1975, right?
- 3 | A. Correct.
- 4 | Q. It was in effect as of July 18th of 1973?
- 5 A. Yes.
- 6 Q. Why isn't it in effect today?
- 7 A. It is not in effect today because of the -8 our procedures, our rules have changed. And
  9 the rules of discovery and what the prosecutor
  10 requires us to provide them is any and all
- 11 documentation in a case.
- Exactly how that came about, I think it was a legal matter that was decided in court. So...
- Q. If you'd turn to 3149, number 2171, do you see that at the top of that page?
- 16 | A. I do.
- Q. Okay. And it's dated May 3rd, 1971. The subject is supplement to GPO 3370, field training program procedures.
- 20 So this general -- is it fair to say that
  21 this general order establishes some revision or
  22 supplement to the field training procedures?
- 23 | A. Yes, it does.
- Q. Okay. And let's go to number 3370, which is on page 3159, all right?



A. Yes.

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Q. So number 3370, which was promulgated on September 10th of 1970, the subject is responsibilities and operational and assignment procedures in the field training program.

So this general order lays out the field training program, correct?

- A. Yes, it does.
- Q. Was there any other training provided to detectives of the Cleveland Police Department in the 1970s, besides the field training program?
- 12 A. Yes, there was.
  - Q. And what training was there?
    - A. They received training from the police academy before they were sworn in as a law enforcement officer. There was training from supervisors and other officers that were memorialized or formalized in the field training officer program.

And there were some opportunities for what we would call today continuing education training for our officers.

- Q. All right. So was there any other training provided to officers in the 1970s?
- A. Not that -- not that I'm aware of.
- Q. Okay. What was taught to officers in the



academy?

- A. Well, in the 1970s, I can tell you what we were taught. In 1984, when I attended the police academy, rules, regulations, laws, Supreme Court decisions, physical fitness, firearms training, how to conduct interviews, diversity training, how to deal with the public, you know, how to write tickets, just, you know, six months of law enforcement training from -- like I said, from rules and regulations all the way down to your responsibilities when you're on and off duty.
- Q. And this was when you attended the academy in 1985?
- 14 A. Yes.
  - Q. Did they have diversity training in the 1970s?
  - A. I don't believe they did, but I couldn't speak on it, but I don't believe they did. I believe that was something that evolved over the years.
    - Q. Okay. And so how did you -- so you were -- what is your understanding of what training officers in the 1960s, let's say, had at the academy?
    - A. My understanding is from one of the reports that

      I reviewed. It was a form 1 report from the

      training academy supervisor, and it listed -- I

      think there was six or seven different categories



1		with the officers' grades, you know, how they
2		scored on it.
3		Exactly the fact that they if there was
4		any lesson plans or anything, I don't have any
5		knowledge of that.
6		I know there was a peace officer training
7		council that was set up by the State's Attorney
8		General, and they followed some of those
9		guidelines.
10		It's quite a bit more formalized today than
11		it was in the '70s.
12	Q.	Okay. What else did officers or sorry.
13		Strike that.
14		How else did officers get training in the
15		1960s and '70s, besides from the police
16		academy
17		MR. MALLAMAD: Objection. You can
18		answer.
19	Q.	and the field training program?
20		MR. MALLAMAD: Objection. Asked
21		and answered. You can answer.
22		THE WITNESS: Okay.
23	Α.	I believe in the 1960s and 1970s, a lot of it was
24		from your supervisor and from your senior
25		officers. I think you could define it as



on-the-job training, just as in any profession.

A more experienced officer would assist you until you became comfortable in what you were doing.

BY MS. WANG:

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- Q. Did you -- when you became a detective, did you have to go to detective school?
- A. No, I didn't.
- 9 Q. Did you have to receive any kind of specialized training to be a detective?
- 11 A. No. The detective function within the Division
  12 of Police is not a rank. It is an assignment.
  13 And you're a patrol officer, working in a plain
  14 clothes investigative assignment.

So your training was -- we do have detective training now, but to your question, when I was a detective, you were detailed to an investigative bureau, and you were trained by the investigators in that bureau.

- Q. Like on-the-job training?
- A. On-the-job training, reviewing some of these policies in the manuals, but, mostly, it was, you just shadowed somebody for a while, until you became comfortable with the process.
  - Q. And in the 1960s and '70s, was there any



1		formalized training for detectives?
2	A.	I believe it was the same thing.
3	Q.	On-the-job training?
4	A.	Yes.
5	Q.	Is there anything in Deposition Exhibit 5,
6		the general police orders from 1969 to 1974,
7		that relates to topic 1A of the deposition
8		notice, which is documenting or memorializing
9		the developments in an investigation in such a
10		way that they would become part of the official
11		file during the course of an investigation?
12		MR. MALLAMAD: Objection to the
13		extent that the documents speak for
14		themselves, but you can go ahead and review
15		this document, Chief.
16	A.	There is no index here, obviously, right?
17		MR. FUNK: All the GPOs?
18		MR. MALLAMAD: No. I'm sorry.
19		The exhibit, Deposition Exhibit 5, what's
20		been identified as general police orders,
21		1969 to 1974.
22		MR. FUNK: Okay.
23	A.	Could you repeat that, please?
24	Q.	Sure. Is there anything in the general police
25		orders, 1969 to 1974, Deposition Exhibit 5,



1		that relates to documenting or memorializing
2		the developments in an investigation in such a
3		way that they would become part of the official
4		file during the course of an investigation?
5		MR. MALLAMAD: Objection. Asked
6		and answer. You can answer, Chief.
7	Α.	There are in the general police orders, there
8		are guidelines regarding reports and what they
9		should include, but there is nothing that says
10		exactly where those reports shall go. So the
11		first answer is yes. It's on page 3103.
12		The second answer is no, that there is no
13		place listed in here, where those reports should
14		go.
15		BY MS. WANG:
16	Q.	All right. Is there anything in Deposition
17		Exhibit 5 that relates to conducting and
18		documenting photo or in-person lineups or
19		showups?
20		MR. FUNK: Objection. Asked and
21		answered.
22		THE WITNESS: I don't believe
23		there is, no.
24		MR. FUNK: You can answer.
25		MS WANG: He hasn't answered with



1		respect to this document.
2		MR. FUNK: His prior answer
3		would have encompassed the answer to
4		that question, but go ahead, Chief.
5		THE WITNESS: No.
6		BY MS. WANG:
7	Q.	Did you have something else to say?
8	A.	No, I didn't.
9	Q.	Okay. Is there anything in Deposition Exhibit
10		5 that relates to topic 1C of the deposition
11		notice, which is use of informants or witnesses
12		during a criminal investigation, including
13		disclosure of such witnesses and payments, gifts,
14		promises, or threats made to such witnesses?
15		MR. FUNK: Objection. Asked and
16		answered. You can answer, Chief.
17		THE WITNESS: Yeah. In these
18		documents, no, there is not. I cited
19		the Manual of Rules is where that would
20		be.
21		BY MS. WANG:
22	Q.	The Deposition Exhibit 5, is there anything
23		in there that relates to D, 1D, disclosure of
24		exculpatory evidence, including, but not limited
25		to, impeachment materials to criminal defendants,



1		defense attorneys, or prosecutors, other than
2		Rule 19-73, which we already discussed?
3	A.	Other than
4		MR. MALLAMAD: Objection. Asked
5		and answered. You can answer.
6	A.	Other than that rule with the letter, no.
7		BY MS. WANG:
8	Q.	And by that rule with the letter, we're talking
9		about the one with the prosecutor's letter?
LO	A.	Yes.
L1	Q.	Okay. Is there anything in Deposition Exhibit 5
L2		that relates to topic 1F, writing, preserving,
L3		and destroying police reports, investigator/
L4		detective notes, memos, exculpatory evidence
L5		during the course of an investigation?
L6		MR. FUNK: Objection. Asked and
L7		answered. You can answer, Chief.
L8		THE WITNESS: Just the writing of
L9		the police reports.
20		BY MS. WANG:
21	Q.	And do you recall which general order it is?
22	A.	That would be I just read it. That is on page
23		3103, reports, what shall be included in the
24		reports.

Okay. Is there anything in Deposition Exhibit 5



1 that relates to discipline, training, and 2 supervision of detectives? 3 MR. FUNK: Objection. It's been 4 You can answer, Chief. answered. 5 THE WITNESS: No, there is not. MS. WANG: Okay. Let's mark that 6 7 as an exhibit. 8 (Thereupon, Deposition Exhibit 6 9 was marked for purposes of identification.) 10 BY MS. WANG: 11 So we -- I have handed you what's been Okay. Ο. 12 marked as Deposition Exhibit 6. That is -- it's 13 Bates stamped CLE 160 through 976. 14 Yes. Α. 15 So I know it's a very large document, but is 0. 16 that one of the documents that you reviewed in 17 preparation for your deposition? 18 Some of the documents in this, I reviewed. Α. 19 Q. Do you know where this copy was obtained 20 from? 21 I think it was -- I believe it was obtained from Α. 22 our police museum. Now, I know that we had two 23 retired police officers working diligently to 24 find all the responsive documents, and I know 25 they recovered a lot of it from our police



- 1 museum.
- 2 | Q. So the cover here is -- it has handwritten on it
- 3 Sergeant C.H. Breaery, B-R-E-A-E-R-Y. Is it your
- 4 understanding that this was that person's copy of
- 5 the manual?
- 6 A. Yes. Yes, it is.
- 7 Q. Not manual, but of the police orders?
- 8 | A. Yes.
- 9 | Q. And he likely donated it to the museum?
- 10 A. It appears that way.
- 11 | Q. So these documents are in reverse chronological
- order, it appears from the approximately -- if
- you go to the last page, the date is from 1961.
- 14 A. Okay.
- 15 | Q. I will just let you get there.
- 16 A. 1959.
- 17 | O. Or 1959, actually.
- 18 A. Yes.
- 19 | Q. It goes from 1959 to 1976.
- 20 A. Correct.
- 21 | Q. Do you know if this is a complete copy of this
- 22 person's, Sergeant Breaery, police orders, or
- 23 this is some subset?
- 24 A. No. I do not know if this is a complete copy.
- 25 Q. Okay. Now, these -- if you flip through it, you



1 will see that it contains the police orders, 2 essentially, from 1959 to 1976. 3 Α. Yes. 4 0. Is this --5 MR. FUNK: Wait for the question. 6 THE WITNESS: Okay. 7 BY MS. WANG: 8 Is it your understanding that these are the Q. 9 police orders that existed from 1959 to 1976? 10 MR. MALLAMAD: Objection. You can 11 answer to the best of your ability. 12 THE WITNESS: To the best of my 13 ability, I would have to say yes. There 14 may be other documents out there, but these 15 are all the documents that could have been 16 located. BY MS. WANG: 17 18 So when you say there may have been other 0. 19 documents out there, what are you referring to? I'm talking about -- I would refer to these 20 Α. 21 general police orders. Exactly how many were issued, if there were any addendums or any other 22 23 orders that could still be -- we could be unable 24 to locate them, but --

So the city has already -- has done a search for



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Q.

- all of the documents that constituted general police orders dating from the 1960s and '70s; is that true?
- 4 A. Yes, they have. Yes.
- Q. And you've produced already the ones that you have obtained, right?
- 7 A. Yes.

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- Q. And you're not -- are you still continuing your
  search for additional documents?
- 10 A. I don't know if the search is ongoing, but the
  11 possibility that other documents may exist or
  12 could have existed is -- it's possible.
- 13 | O. And you don't know what those are?
- 14 A. No. I am not -- I'm not in charge of that search
  15 process. I'm not in charge of producing these.
  16 So --
  - Q. Right. But whatever documents you haven't seen, if there was some general police order out there from the 1960s or '70s that is not in the documents before you that you've reviewed, you would not know what it said, right?
- 22 A. Right, correct. I would not.
- Q. Okay. And the general police orders in this set of general police orders are also numbered, you know, 1 through whatever it is at the end of the



year, and then the second set of numbers is the year, correct?

A. Yes.

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- Q. Okay. To your knowledge, were there any general police orders that were not numbered in that fashion from the 1960s and '70s?
- 7 A. I can't answer. I don't know.
  - Q. If you take a look at -- just one moment.

All right. If you look at CLE 822. So this just has to do with building permits. It's the general police order number 25-53 and the date is April 26, 1963.

It says towards the bottom, "All such inspections" -- and it's talking about building inspections -- "are to be included in the member's daily duty report."

Do you see that?

- 18 A. Yes.
- Q. Okay. So there is a reference here to the daily duty report that we discussed earlier?
  - A. Yes, there is.
- Q. So at least according to this document, daily duty reports were required of officers at least in 1963?
- 25 A. Yes.



- 1 | Q. And they still are today?
- 2 A. Yes, they are.

Yes.

- Q. And is it your understanding that they were required of officers and detectives in the 1970s as well?

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Q. Now, turning to page 732, this one is general police order number 1070, dated April 14th, 1970.

It's an amendment to training bulletin 82.53.

And then there is a discussion of different training bulletins in this general order. Do you still have training bulletins today?

- 13 A. No, we don't.
- Q. What is your understanding of when training bulletins were issued?
  - A. When there was -- my understanding today is, we issue training opportunities, which probably back then would be a bulletin, in divisional notices.

    So that's a divisional notice today.

There is a training opportunity for search and seizure at Tri-C this date. If you'd like to attend, fill out the following form.

That is how we do it today. Maybe they did it a little bit different back then, but I'm not -- but today this would be a divisional notice.



1	Q.	Okay. And did you come across any training
2		bulletins in your search for responsive documents
3		regarding training materials in the 1970s?
4	Α.	No, I didn't.
5	Q.	So the best of your understanding is that a
6		training bulletin from the 1960s and '70s were
7		notices that the department would put out about
8		training opportunities. That is kind of how it
9		would be done today, and you would expect it
LO		would be the same back then?
L1		MR. FUNK: Objection. You can
L2		answer.
L3		THE WITNESS: Right. I would
L4		expect it would be the same. Reading this
L5		document, all new legislation and the
L6		statutes would have been amended and
L7		repealed. Same thing today.
L8		A divisional notice would tell you
L9		if there was new legislation or a statute
20		or an ordinance in the City of Cleveland
21		has been repealed or is no longer
22		enforceable, yes.
23		BY MS. WANG:

Let's take a look at CLE 685. So there is --

that is general order 3470, dated September 16th,



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Q.

1 1970. There is a reference there to the general record room.

Do you see that?

4 A. Yes.

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- 5 | Q. Do you still have a general record room today?
- 6 A. No, we don't.
- 7 Q. What was the general record room?
  - A. The general record room was just what it said.
- 9 It kept all general records for the Division of
- 10 Police internally.
- So your employment application, your
  assignment -- we have a card that tells you where
- 13 you have been assigned throughout the division.
- 14 Those are general records that were -- now
- they're maintained in all sorts of different
- units; police academy unit, inspection unit.
- 17 It's been decentralized. This was just a
- general record room where files were kept.
- Q. Was it just for personnel type files or investigative files also?
- 21 A. It was not investigatory files.
- Q. So where were -- in the 1970s, where were the investigatory files kept for the homicide unit?
- 24 A. For the homicide unit, where they're kept today,
- in the homicide unit.



1	Q.	All right. Turning to CLE 601, this is general
2		police order number 28-71, dated June 1st, 1971.
3		And it's a rescinding of a rule from the Manual
4		of Rules; is that accurate?
5		MR. FUNK: Objection. If you
6		know.
7		THE WITNESS: Yeah. It looks like
8		it, yes.
9		BY MS. WANG:
10	Q.	So changes, amendments, rescinding of rules were
11		done by general police orders, at least as of
12		1971?
13	A.	Yes. It appears so.
14	Q.	And strike that.
15		MR. FUNK: What's that general
16		order number? I'm sorry.
17		MS. WANG: That one is 28-71.
18		MR. FUNK: 28-71.
19		BY MS. WANG:
20	Q.	All right. Let's take a look at CLE 434 through
21		435.
22	Α.	Okay.
23	Q.	Actually, I think I asked you about this one
24		already. So strike that.
25		All right. CLE 323 is general police



1		order number 26-75, dated July 18th, 1975.
2		This rule or police order the subject
3		is unauthorized and prohibited comments,
4		communications, and interviews.
5		And it says, "To the Members of the
6		Department. All members are expressly directed
7		to give full compliance to Rule 4147 and Rule
8		97."
9		So the reference to the rules here is a
10		reference to the Manual of Rules; is that right?
11	A.	Yes.
12	Q.	Okay. And it's the manual that we were
13		discussing earlier?
14	A.	Yes, it was.
	1	

Q. Page 172, CLE 172. It's general police order number 35-76, and it's dated May 24th, 1976. The subject line is acknowledgement of receipt of general police orders, departmental notices, and

memorandums.

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And it says, "To the Members of the Department. Within 48 hours of receipt of a general police order, departmental notice, or memorandum, every commanding officer shall receive a copy of same and return a receipt of copy to the chief's office."



- What is your understanding of whether or not this rule was in place before 1976?
  - A. I don't know if it was in place before 1976.
    - Q. Do you have to do that today? Do officers have to sign acknowledgement that they've received a general order?
- 7 A. No.

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- Q. Did you have to do that when you first started at the department in '85?
- We are required to keep an updated general 10 Α. 11 police order book, which is subject to inspection 12 at any time. And it's done randomly at roll 13 You may be asked to attend roll call 14 tomorrow night at 10:00 o'clock. Bring your 15 general police order book with you and then it 16 will be inspected there. And if it's not in 17 compliance, you'll be told to get it in 18 compliance. You're usually given three days. Τf 19 it's not in compliance then, then there's formal 20 discipline.
  - Q. Well, where -- these days where do officers keep their general police office book?
  - A. Some officers have them in their car when they're driving around. Mine is on my desk. I'm required to keep it. It all depends. Some of



1	them keep it in their lockers. It's up to you to
2	have that and to be able to refer to that. So
3	there is no specific place.

- Q. Okay. Is there anything in Deposition Exhibit 6 that relates to topic 1A of the Notice of Deposition, which is, "Documenting or memorializing the developments in an investigation in such a way that they would become part of the official file during the course of an investigation"?
- A. There are -- there is an order on page 170 that is significant and it deals with evidence in sex crimes cases.
- 14 Q. Okay.

A. But as far as -- I wish they had an index because I could tell you --

MR. MALLAMAD: Well, objection to the extent that the documents speak for themselves and their completeness is not being attested to.

Beyond that you can review every page of that if you wish to to try and answer the question.

A. There are guidelines for how certain offenses should be handled and documented in these general



1		police orders, but to answer your specific
2		question, I'd have to say that I'd imagine
3		that they're in these documents, but exactly
4		where they're at, I cannot point out to you at
5		the moment.
6	Q.	All right. So if there were a written policy
7		relating to topic 1A of the Amended Notice of
8		Deposition, it would be in that document?
9	A.	It would be
10		MR. MALLAMAD: Objection.
11		THE WITNESS: Go ahead.
12		MR. MALLAMAD: To the extent that
13		these documents may reflect that, the City
14		is not attesting that these are a complete
15		set of general police orders in effect in a
16		period of time. These are what had been
17		able to be located.
18		MS. WANG: Shawn, you're not
19		testifying
20		MR. MALLAMAD: Well, let me get my
21		objection on the record and then the Chief
22		can answer.
23		MS. WANG: What is the objection?
24		There's no speaking objections. You're
25		giving a speaking objection.



1		MR. MALLAMAD: Okay. I think that
2		the court reporter got it all down, so,
3		Chief, you can testify.
4		BY MS. WANG:
5	Q.	And just so the record is clear, my question is:
6		If there were a general police order that existed
7		from 1971 through 19 or I'm sorry, strike
8		that.
9		If there were a general police order that
10		existed in that book of general police sorry,
11		strike that.
12		If there were a general police order relating
13		to topic 1A in the deposition notice, it would be
14		reflected in that document CLE 160 through 976;
15		is that correct?
16		MR. MALLAMAD: And I assert the
17		same objection.
18		MR. FUNK: Objection.
19		MR. MALLAMAD: You can answer,
20		Chief.
21	A.	Yes.
22	Q.	If there were a general police order relating to
23		topic 1B of the deposition notice, which is
24		conducting and documenting photo or in-person
25		lineups or showups, it would be contained in



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Deposition Exhibit 6, which is CLE 160 through 1 2 976?

> MR. MALLAMAD: Same objection.

- Yes, it would be in the documents provided. Α.
- If there were a general police order relating to 0. topic 1C of the deposition notice, which is use of informants or witnesses during a criminal investigation including disclosure of such witnesses and payments, gifts, promises or threats made to such witnesses, it would be contained in Deposition Exhibit 6?

MR. MALLAMAD: Same objection.

- Yes, it would. Α.
  - If there were a general police order relating to 0. topic 1D of the deposition notice, which is disclosure of exculpatory evidence including but not limited to impeachment material, to criminal defendants, defense attorneys or prosectors, it would be contained in CLE 160 through 976, which is Deposition Exhibit 6?

MR. MALLAMAD: Same objection.

- 22 Α. Yes, it would.
- If there were a general police order relating to Ο. 24 the documenting and conducting of interrogations or interviews of suspects and witnesses,



- including juveniles, it would be contained in the general police orders Bates Stamped CLE 160 through 976?
- 4 MR. MALLAMAD: Same objection.
- 5 A. Yes, it would.
  - Q. If there were a general police order relating to topic 1F of the deposition notice, which is writing, observing and destroying police reports, investigator/detective notes, memos and exculpatory evidence during the course of an investigation, it would be contained in Deposition Exhibit 6, which is CLE 160 through 976?
- MR. MALLAMAD: Same objection.
- 15 A. Yes.

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- Q. If there were a general police order relating to the topic 1G of the deposition notice, which is discipline, training and supervision of detectives, it would be contained in Deposition Exhibit 6, which is Bates Stamped CLE 160 through 976?
- MR. MALLAMAD: Same objection.
- 23 | A. Yes.
- 24 | Q. Okay. Thank you.
- MS. WANG: Let's take a quick



1		break.
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3		(Thereupon, a recess was had.)
4		
5		BY MS. WANG:
6	Q.	All right. So now, Deputy Chief Tomba, we've
7		reviewed the Manual of Rules, both versions, that
8		we got in this case as well as two different
9		versions of the general police orders.
LO		So, having reviewed those documents and
L1		well, strike that.
L2		So, I just want to go through a couple of
L3		these topics in the notice and ask you about any
L4		unwritten policies or procedures relating to the
L5		topics, all right?
L6	Α.	Okay.
L7	Q.	We talked about the written and I just want to
L8		talk about if there's any unwritten.
L9		So, for topic 1A for the deposition and
20		that's documenting or memorializing the
21		developments in an investigation in such a way
22		that it would become part of an official file
23		during the course of an investigation.
24		Was there any unwritten were there any

unwritten policies or practices in place during



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- 1 the relevant time period relating to that topic?
- 2 A. During that time period, I don't know if there were.
- Q. In the relevant time period, were there any unwritten policies, procedures or practices relating to topic 1B?
  - A. You know, during that time period I don't know.

    I can speak on how we did things -- how we did
    things in the 1980s up until now, but during that
    time frame, no.
- Q. Okay. During the relevant time period of 1970 through 1980, were there any unwritten policies, procedures or practices relating to topic 1C?
- 14 A. No, not that I'm aware of.
- Q. During the time period of 1970 to 1980, were there any unwritten policies, practices or procedures relating to topic 1D?
- 18  $\mid$  A. No, not that I'm aware of.
- Q. During the relevant time period of 1970 to 1980,
  were there any unwritten policies, procedures or
  practices relating to topic 1E?
- 22  $\mid$  A. No, not that I'm aware of.
- Q. During the time period of 1970 to 1980, were there any unwritten policies, procedures or practices relating to topic 1F?



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- 1 A. No, not that I'm aware of.
  - Q. During the time period of 1970 to 1980, were there any unwritten policies, procedures or practices relating to 1G?
- 5 A. Not that I'm aware of, no.
- Q. Okay. Now, who was responsible for the maintenance and preservation of general police orders in the 1970s?
- 9 A. Who was -- I'd have to -- the chief of police.
- Q. Okay. And what is your understanding of what the retention policies were for general police orders in the 1970s?
  - A. The only time a general police order would not be retained is when it was not in effect. So, if the general police order was amended, that old general police order would no longer be in effect.

Now, if your question is how long do we maintain those older ones? I don't have an answer for you. But if it's not in effect, then it's not a relevant document. I don't believe it was retained.

Q. So, it appeared -- you know, from reviewing the general police orders that were produced in this case, there would be general police orders that



- would be issued that were amendments to prior orders. Is that fair to say?
- 3 A. Yes, it is fair to say.
- 4 | Q. Is that still how it's done today?
- 5 A. Yes.
- Q. So, older police orders would still be in effect until it was rescinded or amended in some way?
- 8 A. Correct.
- 9 Q. And then -- so, when a new officer joins the
  10 force, would they just be given a copy of all the
  11 current general police orders that are in effect
  12 as of that date?
- 13 A. Yes.
- Q. And then as new ones are added or old ones are rescinded, they would get inserts that they would put into their books?
- 17 | A. Yes.
- 18 | Q. Okay. And that's still how it works today?
- 19 A. Yes. The filing system is a little different,
- 20 but general police orders are classified in broad
- 21 categories. Administration, investigation,
- 22 traffic, communications. That's the way they're
- 23 | classified today. So, General Police Order 4.011
- is always going to be how we investigate use of
- 25 force. If that's changed, it will just be sent



- out, this has now been changed -- the Section Gl
  is now changed. Review it. But that number
  stays the same. A little bit different in the
- 5 Q. The numbering system?
- 6 A. The numbering system, that's all.
- Q. And there was the one general police order we talked about, which is No. 19-73 relating to the obligation to disclose evidence to the prosecutor, correct?
- 11 A. Yes.
- Q. That's the one that contained the prosecutor's letter?
- 14 A. Yes.
- Q. So, that topic area, the topic area of disclosure of evidence to prosecutors and defense counsel, is the kind of topic area that would be discussed in a general police order?
- 19 | A. Yes, it is.
- Q. And so if there were other general police orders relating to the topic of disclosure of evidence to criminal defense counsel or to prosecutors, it would be in a general police order?
- 24 A. Yes, it would.
- MS. WANG: Let's have this marked



	as 7.
	(Thereupon, Plaintiff's Exhibit 7 was marked
	for purposes of identification.)
Q.	So, I have handed you what has been marked as
	Deposition Exhibit 7.
	So, Deposition Exhibit 7 is the City of
	Cleveland's answer to Plaintiff's first amended
	amended first set of interrogatories to
	Defendant City of Cleveland.
	Could you take a look at that and let me know
	if you've seen that before.
Α.	I have seen this document before.
	MS. WANG: Let's have this marked
	as Exhibit 8.
	(Thereupon, Plaintiff's Exhibit 8 was marked
	for purposes of identification.)
Q.	All right. So, Deposition Exhibit 8 is a
	verification. And it is is that your
	signature there?
Α.	That is, yes.
Q.	Okay. And so you have verified on this form that
	A. Q.



1	you have answered the interrogatories and given
2	supplemental answers to the interrogatories under
3	oath?

- A. Yes, I have.
- Q. Okay. Now, let's take a look at DepositionExhibit 7, No. 8.
- 7 A. Okay.

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Q. All right. So, Interrogatory No. 8 states, please state whether any of the individual defendants or any other defendant city employee involved in the Harold Franks' homicide investigation acted inconsistently with any of the policies, customs or practices of the City of Cleveland at any time during the events described in Plaintiff's Complaint.

Now, you read Plaintiff's Complaint, correct?

- A. Yes.
- Q. So, what is -- what is the city's position with respect to whether any of the individual defendants involved in the homicide investigation acted inconsistently with any of the policies or practices with the City of Cleveland?

MR. FUNK: Objection.

MR. MALLAMAD: Objection. To the extent that Chief Tomba can answer beyond



1		what's already in the answer to
2		interrogatory, in light of the objection
3		that's also contained in there, you may
4		respond, Chief.
5	Α.	My response is there was no inconsistency within
6		the policy and the Manual of Rules. And I cannot
7		make a determination about customs or practices
8		during that time frame.
9	Q.	Okay. The officers, the defendant officers in
10		the case, acted consistently with the policies as
11		reflected in the manual of rules in the general
12		police orders?
13		MR. MALLAMAD: Objection.
14		MR. FUNK: Objection.
15	A.	As far as I was concerned, yes, that they
16		followed the Manual of Rules and the general
17		police orders, yes.
18	Q.	With respect to Interrogatory No. 10, which is on
19		page 7, it states for any document requested in
20		Plaintiff's discovery requests that have been

The answer that was given here says documents

lost, discarded or destroyed, please identify

each such document as completely as possible and

state the approximate date it was lost, discarded



or destroyed.

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may have been destroyed in accordance with the city's record retention policy.

Are you aware specifically of any documents that have been destroyed in this case relating to any policies or procedures of the city?

A. No, I am not.

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- Q. Okay. Interrogatory No. 12 states, do you contend that the City of Cleveland had in place between 1950 and 1980 a written policy or procedure that -- and then it lists a bunch of topic areas. Just take a moment to read through those subsections and then I'll ask you some questions about it.
- 14 A. Okay. I'm done. Go ahead.
- Q. All right. So, we've spent a lot of time already today talking about the policies and procedures relating to topics 12A through E, correct?
- 18 A. Yes, we have.
  - Q. Are there any other policies, written policies or procedures, that the City of Cleveland had relating to any of these topics, which you're aware of, other than what we've discussed today?
- A. Other than what we've discussed and what's been provided, no.

MS. WANG: Let's mark this as



1 Exhibit 9. 2 3 (Thereupon, Plaintiff's Exhibit 9 was marked 4 for purposes of identification.) 5 6 Deposition Exhibit 9 is your -- the City of Ο. 7 Cleveland's supplemental answers to Plaintiff's 8 First Set of Interrogatories. Just take a moment 9 to look at that and let me know if you've seen 10 that before? 11 I have seen this document before. Α. Yes. Okay. And this one is also verified under oath 12 Ο. 13 under the verification that you signed, correct? 14 Yes, it is. Α. Okay. If you turn to page 3, Interrogatory No. 15 Ο. 16 12, Interrogatory No. 12 says -- now, this 17 relates to the one that we were just discussing 18 on the other exhibit --19 Α. Yes. 20 -- the policies and procedures that we talked Q. 21 about today. 22 So, the City of Cleveland has supplemented 23 its answer by saying, upon information and belief 24 Defendant, City of Cleveland, states that there

were written policies and procedures between 1950



1	and 1980 regarding all the subject areas								
2	referenced in Interrogatory No. 12.								
3	Upon a diligent search of its records from								
4	the relevant time period, the City of Cleveland								
5	has located some of the general police orders,								
6	written training manuals and other written								
7	procedures from the relevant period of time and								
8	has produced such documents to the Plaintiff.								
9	Upon information and belief, the documents								
10	produced are all not the written policies,								
11	procedures and training manuals that were in								
12	existence at this time.								
13	Are there any written policies or procedures								
14	relating to any of the topics in 12A through E								
15	other than what we've discussed today?								
16	MR. MALLAMAD: Objection. You car								
17	answer.								
18	MR. FUNK: Objection. Asked and								
19	answered.								
20	A. The answer is that I don't know, but I know the								
21	efforts that were made to locate all these								
22	documents were Herculian efforts by a couple of								
23	retired policemen. So, is there a possibility								
24	that other information does exist, that								

possibility is there, but exactly where it's at,



- I don't have any knowledge of it. And like I said, I believe that the men that worked on this did everything they could to locate it.
  - Q. And so on what basis have you said under oath that upon information and belief the documents produced are not all the written policies, procedures and training materials that were in existence at the time?

9 MR. MALLAMAD: Objection. You can answer.

- 11 A. I'm sorry. Upon --
- 12 | Q. So, you're -- what you're aware of --
- 13 A. Right.

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- 14 Q. -- is the efforts that certain officers with CPD

  15 made --
- 16 A. Yes.
- 17 Q. -- to locate documents, right?
- 18 A. Correct.
- Q. And you don't know what documents may have existed other than the ones that have been produced, if any?
- 22 A. That's correct.
- Q. You don't know if there are other general police orders or versions of the Manual of Rules that did exist that you haven't found?



- 1 A. That's correct.
- Q. Okay. You understand that you signed the answers to these interrogatories under oath on behalf of the City of Cleveland?
- 5 A. Yes. Yes.

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Q. In your supplemental interrogatory answer No. 12, it states that at the end, upon information and belief, the documents produced are not all the written policies, procedures and training manuals that were in existence at this time.

Upon what information or belief did you write that sentence?

- A. I would say it's not information. It's being a police officer for 31 years, knowing how police departments operate. Knowing how our police department operates with the volume of records that we produce daily, yearly, that I'm confident that they -- their search was exhaustive. But are there other documents? There is a possibility.
  - So, I'm not saying it is a definite, I'm not giving you that. In fact, I said, there is a belief that there could be something else out there.

That I have knowledge of? No, absolutely



- not. I do not have knowledge that there's
  something that's out there that's being withheld
  at all, but I do know how police departments run
  and how the Cleveland Police Department runs.
  - Q. Okay. And so you don't know, one way or the other, what any missing policies or procedures might have said?
- 8 A. No, I don't. I do not.
- 9 Q. Or even if there are any?
- 10 A. Correct, I do not know.
- Q. And the chief of police would have been responsible for maintaining or preserving any policies and procedures; is that true?
- 14 A. Yes.

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Q. Okay. No. 13, Interrogatory No. 13 in Deposition Exhibit 7, it states do you contend that the City of Cleveland had in place between 1950 and 1980 any training for its police officers, formal or informal, relating to any of the subject areas identified in Interrogatory No. 12A through E above?

So, we talked a little bit about training that existed in the 1960s and '70s. And talked about the police academy. You mentioned the police officer -- peace officer's training



1		council, and you mentioned on-the-job training
2		from supervisors.
3		MR. MALLAMAD: Wait for the
4		question.
5	Q.	Okay. Is there any other training that existed
6		for police officers in the 1960s and '70s?
7		MR. MALLAMAD: Objection. You can
8		answer.
9	A.	In reviewing the documents that were provided, I
LO		do recall seeing some training certificates for
L1		some officers limited to that. Other than that,
L2		I do not know.
L3	Q.	Okay. So there would have been training, as
L4		reflected in whatever training certificates the
L5		officers had, right?
L6	Α.	It is documented that were the some of the
L7		documents that were provided.
L8	Q.	Okay. Are you aware of there being any training
L9		of detectives in the Cleveland Police Department
20		on how to document or memorialize the various
21		developments in an investigation in such a way
22		that it would become part of the official file?
23		MR. MALLAMAD: Objection. Asked
24		and answered. You can answer.
25	A.	I believe that those policies and that training



1		was outlined in the document from the Ohio Police								
2		Officers Training Academy, and some of it we								
3	discussed that were in the Manual of Rules a									
4	Regulations.									
5	Q.	Q. Is there any training that the Cleveland Police								
6	Department provided to detectives that required									
7		them to place any witness statements in the								
8		official file or otherwise make them available to								
9		criminal defendants, defense counsels, and								
10		prosecutors?								
11		MR. MALLAMAD: Objection. Asked								
12		and answered. You can answer, Chief.								
13	Α.	As far as training, I would have to say no. But								
14		still going back to what I said earlier, being								
15		guided by the law and the general police orders.								
16	0.	Was there any training that the City of Cleveland								

- Q. Was there any training that the City of Cleveland provided between 1950 and 1980 to its detectives regarding documenting or memorializing photo or in-person lineups or otherwise governing the conduct of detectives during photo or in-person lineups?
  - MR. MALLAMAD: Objection. Asked and answered. You can answer, Chief.
- A. Specifically training, once again, my answer would be the same, no. But under the law and



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1	under	the	general	police	orders,	we	were	expected
2	to fo	llow	those.					

- Q. Was there any training that the City of Cleveland had in place between 1950 and 1980 for detectives, requiring them to disclose exculpatory evidence?
- MR. MALLAMAD: Objection. Asked and answered. You can answer, Chief.
  - A. No. No specific training. Just once again, following the law and the general police orders.
  - Q. Was there any training that the City of Cleveland had in place between 1950 and 1980 relating to requiring detectives of the Cleveland Police Department to document or memorialize interrogations or interviews of suspects and witnesses including that police officers retain notes of interviews?
    - MR. MALLAMAD: Objection. Asked and answered. You can answer, Chief.
  - A. No. No specific training as to that. Just the rules of the department.
  - Q. Okay. So the -- let's take a look at

    Interrogatory No. 14 in Deposition Exhibit 7 -actually strike that, let's go to something
    else. - -



1 (Thereupon, Plaintiff's Exhibit 10 was marked 2 for purposes of identification.) 3 Take a look at Deposition Exhibit 10 4 Q. All right. 5 and let me know if you've seen that before. 6 Yes, I've seen this document before. Α. 7 Okay. Now, that is a document Bates Stamped CLE Q. 8 2589 through 2886, titled Source Document for 9 Police Training. 10 Is that one of the documents that you 11 reviewed for your deposition? 12 Yes, it was. Α. 13 And do you know when this was published? 0. 14 No, I don't unless there's a -- no, I don't. Α. 15 Do you know if this is distributed to officers or Q. 16 detectives through the department? 17 No, I don't. Α. 18 Do you know how this document was obtained? Ο. 19 Α. It was obtained on the -- through a request from 20 the law department. And I believe it was 21 obtained by the two investigators from the law 22 department. 23 So, do you know whether or not this Ο. 24 document was given to two detectives or officers

in the 1970s as a part of their training?



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1		MR.	MALLAMAD:	Objection.	You	can
2	answer.					

- A. No, I don't. This particular document, no, I do not know if this was provided.
  - Q. Okay. So, do you know why this document was produced in discovery in this case?
  - A. I do not know why it was produced. I would imagine it was produced at the request of somebody, whoever.
- Q. But you have no information that this was actually given to officers as a part of their training in the 1970s?
- MR. MALLAMAD: Objection. You can answer.
  - A. No, I have no facts that this was provided to officers in the 1970s.
    - Q. Okay. What does the peace officers training council do?
    - A. The Ohio Peace Officers Training Council is a group that is -- they set standards for police officers' training throughout the state under the guidance and the direction of the Ohio Attorney General.
    - Currently our officers have to be OPOTA, Ohio Peace Officers Training, it's an association now.



1	They have to be OPOTA certified. They provide
2	certification for law enforcement officers
3	across the state. And they set standards for law
4	enforcement.

- O. Did that exist in the 1970s?
- 6 A. Yes, it did.

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- Q. Okay. And what was the peace officers training council's role with respect to training Cleveland police officers in the 1960s and '70s, if any?
- A. I don't know if they had any role in the actual training of Cleveland police officers. I believe they set forth a source document, a best practice, what they felt was the best way to conduct law enforcement at that time throughout the state.

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17 (Thereupon, Plaintiff's Exhibit 11 was marked for purposes of identification.)

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- Q. I'll give the Bates numbers for the record.

  Deposition Exhibit 11 is CLE 3640, 3641, 3337,

  3342, 3949, 3945 -- sorry --
- 23 A. 36.
- 24 Q. 3545, 3546, 3416, 3417, 3429, 3957, 3960, 3965 25 and 3967.



A. Yes.

- Q. So, these are some training certificates that were in the personnel files of the defendant officers in this case that were produced to us in discovery. Could you just take a look through it and let me know if you've seen this before.
- A. Yes, I have seen these before.
- Q. Okay. Let's start at the beginning. The first page, 3640 is the certificate from the State of Ohio to Peter Comodeca from the Peace Officer Training council. And it's dated 9/13/74. It says this is to certify that Peter Comodeca is an instructor in the criminal code training program.

Do you know what this certificate was for exactly?

- A. Just what it says is that Officer Comodeca was certified to be an instructor in criminal code training, which is not unusual. We still do that today. We still have our officers that are certified by OPOTA to train our officers. Today it's called Train the Trainer. You train a group of officers, they become the internal trainers to train their members of the division.
- Q. Do you know what was taught in the criminal code training program?



1 A. No, I don't.

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- Q. Did you see documents that were produced in this case that related to a criminal code training program?
- 5 | A. I don't -- I don't recall if I did.
  - Q. Okay. The second page is another certificate relating to Peter Comodeca from the Ohio Peace Officer Training council and it says this is to certify that Peter Comodeca completed the Ohio Peace Officer criminal code training program.

    Awarded September 1st, 1974.
    - So, do you know what this certificate was for?
  - A. This certificate looks like a certificate of completion of a certain amount of hours of a course regarding the criminal code that was given by the Ohio Peace Officer Training council.
- Q. And do you know what the substance of the criminal code training program was?
- 20 A. No, I don't.
- Q. Okay. So it appears that he received his
  certificate to be an instructor in the program 12
  days after he received training in the program
  itself. Is that accurate?
- 25 A. Yes.



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Q. The next page is a certificate, the same kind of certificate, but to Frank Stoiker, for completing the Ohio Peace Officer criminal code training program dated September 1st, 1974.

And what's your understanding of what this certificate was for?

- A. My understanding is the same, that Officer

  Stoiker attended a training session and completed
  it successfully and was provided this certificate
  as proof.
- Q. Okay. So, if there were documents that were produced in this case relating to the criminal code training program, would it be fair to say that your knowledge of what was taught in that training program is reflected in the documents?
- A. Yes. My knowledge is -- I really don't have exact knowledge. I can only assume that it was the criminal code at that time that they trained them on.
- Q. On what kinds of things were offenses and so on?
- 21 A. Correct.
- Q. Okay. The next page is CLE 3343. This appears
  to be a student registration form signed by Frank
  Stoiker --
- 25 A. 3342?



- 1 | Q. I'm sorry -- what did I say? 3342.
- 2 A. Okay. Yes, that's correct.
- 3 | Q. All right. So this was a signup form it looks
- 4 like for criminal code training. Is that fair to
- 5 say?
- 6 A. Yes, it is. It's a student registration form.
- 7 Q. Now, at the bottom it says, there's a signature
- 8 for the training officer of the police academy,
- 9 Francis Reagan, Lieutenant. Do you see that?
- 10 | A. Yes.
- 11 | Q. Actually I'm not sure it says Francis, but it
- 12 says F-r-a -- I'm not sure what it says, but the
- last name is Reagan. Are you familiar with a
- 14 lieutenant named Reagan?
- 15 | A. No.
- 16 Q. Do you know who were the people who were training
- officers in the police academy at the time?
- 18 A. No, I don't.
- 19 Q. Are there records of who the police officer
- 20 training officers were in the 1970s?
- 21 A. I don't know if they -- if those exist.
- 22 | Q. The next page is CLE 4949 and it is also a
- 23 criminal code training program certificate. This
- one is to Eugene Terpay dated September 1st,
- 25 1974.



And so what's your understanding of what the certificate was for?

- A. My understanding is the same criminal code training Officer Terpay participated in and was given this certificate upon completion.
- Q. All right. And then the next page is CLE 3545.

  It's also the same certificate, but to John

  Staimpel, dated September 1st, 1974. Is this also for completing the criminal code training program?
- A. Yes, it is.

Q. Page 3546 is a student registration form for John Staimpel. We don't need to ask about that.

All right. The next page is CLE 3516. It's also a criminal code training program certificate to James Farmer, dated September 1st, 1974.

And is it your understanding that this certificate was for completing the criminal code training program?

- A. Yes, it is.
- Q. All right. Turning -- skipping the next page and turning to 3429. It's an international homicide seminar certificate to JT Farmer. This states, this certifies that JT Farmer has satisfactorily completed a course in homicide investigation as



1		prescribed by the board of trustees of the
2		Hocking Technical College, Nelsonville, Ohio.
3		Total clock hours 40. Dates March 18 through 23,
4		1979.
5		What is your understanding of what this
6		certificate is for?
7	A.	My understanding is that Officer Farmer attended
8		a one-week course, 40 hours, and that he
9		completed that course and was issued that
10		certificate of completion by Hocking Technical
11		College.
12	Q.	And he completed that in 1979?
13	A.	Yes, he did.
14	Q.	Do you know what the substance do you know
15		anything about the substance of what was taught
16		during that course?
17	Α.	No, I don't.
18	Q.	Page CLE 3957 is a departmental information form
19		that's dated June 30th, 1980. Take a look at
20		this form for a moment and then I will ask you a
21		question about it.
22		All right. Ready?
23		So this one states at the top, during the

week of June 23 through 27, 1980, a training

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seminar, first one, supervision was held at the



police academy, and then it basically states, you know, there were sergeants and certain other people who were in attendance and topics that they were taught on. One of the sergeants in attendance was Jerold Englehart. He had a score on a posttest of 83.

Do you have any knowledge of what was taught during this training seminar?

- A. Only what's listed on this. This is a Form 1.
- 10 Q. Okay. This is a Form 1.
- 11 A. This is a Form 1. You can see it up on top, CFC
  12 Form 71-1. So this is an internal document from
  13 Sergeant Mengle to her lieutenant. And exactly
  14 what was taught, just what she has documented,
  15 leadership, interpersonal communications,
  16 everything else on this document.
  - Q. Is it fair to say that generally what was taught involved the subject matter of supervision?
- 19 A. Yes.

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- Q. Do you have any other knowledge of what was taught during this course?
- 22 | A. No, I do not.
- Q. On the next page, CLE 3960, it is also a Form 1.

  It's dated March 31st, 1977. And the subject is numbers in attendance, juvenile handling seminar



1	conducted	at	the	police	academy	on	March	30th,
2	1977.							

Then it says in the narrative part: Sir, the following is a list of members in attendance at the police academy for the juvenile handling seminar conducted on Wednesday, March 30th, 1977, between 1230 and 1630 hours. And Detective Englehart -- or I don't know if he was a detective then, but Englehart is listed there. Do you see that?

- A. Yes, I do. And he was a detective at the time.
- 12 | Q. Oh, he was. Okay.
- So this -- is it your understanding that this document states that Detective Englehart attended a juvenile handling seminar in 1977?
- 16 | A. Yes.

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- Q. Do you know -- and this seminar lasted four hours?
- MR. MALLAMAD: Objection.
- 20 A. That's what the document states.
- Q. Do you have any understanding of what specifically was taught during that seminar?
- 23 A. Specific, no, I do not.
- Q. Page 3965 is a certificate issued to Jerold
  Englehart for completion of the criminal code



- training program on September 1st, 1974. Do you see that?
  - A. Yes, I do.

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- Q. So, is it your understanding that this indicates that Detective Englehart finished that training program on that date?
  - A. Yes, it is.
- Q. Okay. Do you have any knowledge of what -- I'm sorry, strike that.

What is your understanding of what any of the defendant officers or detectives in this case were trained on other than what's reflected in these documents that we just discussed, which is Deposition Exhibit 11?

- A. I don't have any other documents or knowledge of what they were trained on besides what's reflected in these documents.
- Q. If any of the defendant detectives in this case had received any additional training or certificates of any kind from specific programs, would you expect that to have been contained in their personnel files?
- 23 A. I would have expected that, yes.
- Q. Okay. Let's talk about topic 6 in the deposition notice.



1	So, 6A asks for testimony on any efforts by
2	the City of Cleveland to identify, investigate,
3	or present any of the following types of
4	misconduct, and discipline imposed by the city as
5	a result of such investigations.
6	6A is, improper eyewitness identification
7	procedures including misconduct related to live
8	in-person lineups and photographic showups, or

lack of documentation regarding the same.

What is your -- what efforts did the City of Cleveland make to identify or prevent any of these types of misconducts listed in topic 6A?

MR. MALLAMAD: Objection. You can

answer.

- A. The efforts at the time go back to following the law and the general police orders. If I understand your question correctly. If you're asking for the efforts to locate these types of things, like I said before, the efforts were by the two retired police officers and numerous members of the division of police.
- Q. And let me be clear, I'm not asking about documentary evidence --
- A. Okay.

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Q. -- I'm asking about the topic -- topic in topic



1970 through 1980.

six relates to what efforts the City of Cleveland 1 2 made to identify, investigate or prevent any of 3 those types of misconduct that are listed in A 4 through D? 5 Let me just object. MR. MALLAMAD: 6 What time period are you asking about? 7

MS. WANG:

Α. Okay.

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- Ο. So, during that time period, what efforts -let's break this down. What efforts did the City of Cleveland make to identify any misconduct relating to improper eyewitness identification procedures?
- Okay. I don't think effort was made to identify Α. misconduct, but by those training records and our general police orders I think there was guidance provided to avoid misconduct. And as far as discipline, I don't see any discipline in any of these records where anyone was disciplined for not following any of these orders that were -orders or laws.
- Were there any general police orders relating to Q. eyewitness identification procedures at all in all of the documents that we looked at today? MR. MALLAMAD: Objection. You can



	JACK	SON VS CITY OF CLEVELAND
1		answer.
2	A.	I don't believe there was, no.
3	Q.	Okay. Were there any efforts made by the City of
4		Cleveland to investigate any misconduct relating
5		to improper eyewitness identification procedures?
6		MR. MALLAMAD: Again, same
7		objection. You're referring to the 1970s?
8		MS. WANG: Yes, that's what the
9		notice says. May 19 in the front
10		page
11		MR. MALLAMAD: Just so we're
12		clear. There's other subjects mentioned in
13		those dates, so I wanted to be just
14		wanted to have the deputy chief clear that
15		you're asking about between 1970 and 1980
16		is what she's referring to.
17		THE WITNESS: Yes, I'm clear and
18		the answer is no.
19	Q.	Okay. Were there any efforts by the City of
20		Cleveland to prevent misconduct relating to
21		eyewitness identification procedures in the time
22		period of 1970 to 1980?
23		MR. MALLAMAD: Objection. Go

A. I would to have say, no, not to my knowledge



ahead.

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there wasn't.

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- Q. Were there any efforts by the City of Cleveland to identify, investigate or prevent misconduct relating to conduct of in-person lineups during the 1970s or '80s?
- 6 MR. MALLAMAD: Objection. You can answer.
  - A. No, not that I'm aware.
  - Q. During the time period of 1970 to 1980, were there any efforts by the City of Cleveland to identify, investigate or prevent misconduct relating to failure to place Brady evidence and information in the official investigative file or otherwise withholding material, exculpatory evidence?

MR. MALLAMAD: Objection. You may answer.

- A. I would say that there was in the general police orders as a follow-up to the letter written by John Corrigan.
- Q. Are you saying -- are you just referring to the general police order? The one that we talked about before?
- 24 A. Yes, that's correct.
  - Q. I just want to be clear in your answer. Are you



1	saying	there	was	follow-up	to	that	general	police
2	order?							

A. No.

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Q. Are you aware of any other efforts by the City of Cleveland to identify, investigate or prevent misconduct relating to withholding exculpatory evidence besides what's in the general police order?

9 MR. MALLAMAD: Objection. You can answer, Chief.

- A. No, I am not.
- Q. Are you aware of any efforts by the City of
  Cleveland to identify, investigate or prevent
  misconduct relating to failure to identify -- or
  failure to document and preserve information
  learned during a homicide investigation?

  MR. MALLAMAD: Objection. You can
  - A. No, not to my knowledge I'm not.

answer, Chief.

Q. Are you aware of any efforts by the City of Cleveland to identify, investigate or prevent misconduct relating to improper interviews, interrogations or interactions with juvenile witnesses?

MR. MALLAMAD: Objection. You can



1 answer. 2 No, not to my knowledge. Α. 3 Are you aware of any audits or other sort of Q. 4 internal reviews conducted of any of the general 5 police orders in the 1970s or '80s to insure that 6 they were, in fact, being followed by officers? 7 MR. MALLAMAD: Objection. You can 8 answer. 9 No, I'm not aware of any audits. Α. 10 MR. FUNK: Can we take a break? 11 Well, let's go off the MS. WANG: 12 record. 13 14 (Thereupon, a recess was had.) 15 16 BY MS. WANG: 17 Ο. Okay. 18 Can I say something? Α. 19 Q. Yes. 20 When I was providing my answers regarding Α. 21 efforts, I was under the impression you were 22 looking for documents. So, what I would like to 23 add, if it's okay, is that the efforts that were 24 made were in the form of, you know, supervision. 25 We had complaints that were investigated, and I



think some of those are documented in the responsive documents that I reviewed.

So, as far as efforts to identify, investigate or present, any of the following types of misconduct, discipline imposed by the city, I didn't have documentation, but I can tell you the efforts were internally supervision of the supervisors.

And then secondly is, like I said I believe I did see a document in there where a complaint was lodged in writing and that was investigated.

So, if that's a little different from the one-word answer that I gave you, I'd have to say that those were some of the efforts that were made, but as far as having actual documentation of that, we do not.

- Q. So, in what way do supervisors make efforts to investigate or prevent improper eyewitness identification procedures?
- A. Well, and the way we do it today is still in place is they are responsible for those under their command for review of reports, for review of an oversight of anything that they're doing.

  If they were conducting an interview, they would view that from a separate room, they would view



1		that interview. If they were conducting a
2		lineup, a supervisor would have to be there.
3		That's part of our that would be part of their
4		internal policy.
5		So, I think the first-line supervision are
6		the ones that are really charged with the
7		integrity and performance of the officers that
8		they supervise.
9	Q.	So, can you think of anything specifically that
LO		any supervisors did in the 1970s strike that.
L1		I understand your answer to be directed to
L2		what happens today. Is that what you're saying?
L3	Α.	And from the time I was on the police department,
L4		yes.
L5	Q.	Okay. So, in the 1970s, what efforts did
L6		supervisors make to identify, investigate or
L7		prevent improper eyewitness identification?
L8	A.	Okay. That is in the specific I cannot give
L9		you specifics, but it is in the Manual of Rules
20		what their responsibilities are. And their
21		responsibilities are guidance and oversight. To
22		make sure that the rules and regulations and the
23		laws are followed. But specifically I can't tell

you what took place in the 1970s.

But specifically did you see any rules or



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Q.

1		regulations relating to supervisors
2		investigating, preventing or identifying improper
3		eyewitness identification?
4	Α.	Did I see?
5	Q.	Right.
6	Α.	In the 1970s?
7	Q.	Did you see any in any of the documents that have
8		been produced?

10 Q. Okay. With respect to topic 6B, speaking of,

No, I didn't.

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since you brought up supervision, what efforts
did supervisors make in the 1970s to identify,
investigate or prevent officers from withholding
exculpatory evidence?

MR. MALLAMAD: Objection. Asked and answered. To the extent you can expand.

A. Yeah, I would say that their efforts were, as I stated before, the oversight of the officers.

And as far as the exculpatory evidence, they would really never have a role in that. All that was done by the prosecutor's office. It was up to those supervisors to insure that everything related to that case was provided to the prosecutor's office.



1	Q.	The supervisors are not there with investigating
2		detectives during an investigation, correct?
3		MR. MALLAMAD: Objection. You can
4		answer.

- A. No, that's not correct, they are there. For every part of it? No. But they are there for quite a bit of it.
  - Q. But there are things that an investigating detective would do in an investigation in the absence of a supervisor, right?
- 11 | A. Yes, there are.
- Q. Investigating detectives might interviewwitnesses, right?
- 14 | A. Yes.

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- Q. They might receive tips about information in a case, right?
- 17 | A. Yes.
- Q. A supervisor may or may not be aware of that depending on whether they were there for that, right?
- MR. MALLAMAD: Objection. You can answer.
- A. Immediately at that time they might not be aware of it, but that's part of the Form 10, Form 1, and the daily debriefing that we talked about



earlier.

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- Q. So, if the investigating detective decides not to write something down in a Form 1 or a Form 10 or tell their supervisor about something that's going on in a case, how would the supervisor know what was going on?
- 7 MR. MALLAMAD: Objection. You can answer.
- 9 A. They wouldn't know.
- Q. Okay. So a supervisor just depends -- just relies on what the investigating detective decides to tell them --
- MR. MALLAMAD: Objection.
- Q. -- about an investigation. Is that fair to say?

  MR. MALLAMAD: Objection. You can
  answer.
- 17 | A. Yes.

- Q. And so a supervisor can only insure that an investigating detective turned over everything to the prosecutor if the investigating detective had decided to turn over everything to the supervisor?
- MR. MALLAMAD: Objection. You can answer.
  - A. Correct. And that is the detective's



responsibility to do that.

Q. What efforts do supervisors at the City of Cleveland make to identify, investigate or prevent the failure to document and preserve information learned during a homicide investigation?

MR. MALLAMAD: Objection. Asked and answered. To the extent you can expand, you can answer, Chief.

- A. Okay. The efforts would be the same with the supervisors. It's their responsibility to oversee that investigation and insure that things are being done properly and within the law.
- Q. And if there was information that was learned by an investigating detective that the supervisor was unaware of, how does the supervisor become apprised of it?

MR. MALLAMAD: Objection.

MR. FUNK: Objection.

MR. MALLAMAD: You can answer.

- A. They wouldn't know about it.
- Q. What efforts did the supervisors at the City of Cleveland make to identify, investigate, or prevent improper interviews, interrogations, or interactions with juvenile witnesses?



1	MR. MALLAMAD: Objection. Asked
2	and answered. To the extent you can
3	expand, Chief, you can answer.

- A. That would just be the supervisor's responsibility is to provide that oversight and to make sure things are done correctly with the information that they have provided to them.
- Q. Today do you have general orders or any other kind of rules or regulations related to juvenile witnesses?
- A. Yes.

- Q. And what do those rules and orders say generally?

  MR. MALLAMAD: Objection. Beyond
  the scope of the deposition, but go ahead,
  Chief, you can answer.
- A. Generally, that it's a general guidance about how we interact with juveniles when we're either questioning them or just the daily interaction with them, that there has to be an adult with them now. And, you know, we treat them a little bit different than we do adult witnesses and/or suspects.
- Q. What is the reason that juvenile witnesses or suspects are treated differently than adults?

  MR. MALLAMAD: Objection. You can



answer.

- A. The way it is now is that's -- you know, we felt that -- I don't know if there was any one specific incident that led to that, but being that they're underage, you know, we just thought it was best that we had an adult there with them.
- Q. Would you ever question a juvenile witness without an adult present?

MR. MALLAMAD: Objection.

- 10 | A. Yes, we would.
- 11 Q. Under what circumstance?

MR. MALLAMAD: Same objection.

- A. An interview on the street. If a juvenile came up and engaged us and said, hey, this is what's going on, you know, we would continue that dialog with them. We do it all the time. You know, we interact and interview and speak with juveniles without adults there all the time. If it became part of a, you know, specific investigation, it all depends where that investigation would lead, if we would require a parent.
- Q. Now, what if you were going to take a statement from a juvenile regarding something he had witnessed, a crime he had witnessed, is that a situation --



	JACK	JOIN VS CITT OF CLEVELAND
1		MR. FUNK: Objection.
2	Q.	where you would have a parent present or an
3		adult present?
4		MR. MALLAMAD: Same objection in
5		that it exceeds the scope of this
6		deposition. You can answer, Chief.
7	A.	Today we would.
8	Q.	And why?
9		MR. MALLAMAD: Same objection.
10	A.	It's in our general police orders.
11	Q.	Do you think that's a good idea to do that?
12		MR. MALLAMAD: Objection.
13		MR. FUNK: Objection.
14		MR. MALLAMAD: You can answer,
15		Chief.
16	A.	Do you want my opinion?
17	Q.	Yeah.
18	A.	Yes.
19	Q.	Why?
20	A.	I just think it's a good idea, just like I think
21		Miranda is a good idea and now it's case law. So
22		I think juveniles need to feel comfortable and,
23		you know, be allowed to speak freely.
24	Q.	Was there a requirement that an adult be present
25		for juvenile interviews in the 1970s?



1		MR. MALLAMAD: Objection. Asked								
2		and answered. You can answer.								
3	A.	I don't believe there was.								
4	Q.	Do you know when the department first adopted a								
5		policy that an adult should be present?								
6	A.	No, I don't.								
7	Q.	Was that the case was that rule in place when								
8		you first started in 1985?								
9	A.	I don't know if it was. I couldn't tell you. I								
10		would have to look.								
11	Q.	Are you aware of any instance between 1950 and								
12		May 19th, 1975 in which the final policy maker								
13		for the police department undertook to review or								
14		analyze whether there were any problems with any								
15		of the policies or procedures in the department?								
16		MR. MALLAMAD: Objection. You can								
17		answer, Chief.								
18	A.	No, I do not.								
19	Q.	Are you aware of any instance between 1950 and								
20		May 19th, 1975, in which the final policy maker								
21		for the department undertook to review,								
22		investigate or determine whether there was								
23		misconduct going on with respect to withholding								
24		exculpatory evidence?								

MR. MALLAMAD:



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You can

Objection.

1		answer, Chief.								
2	A.	. No, I do not.								
3	Q.	If there had been efforts to systematically								
4		review the policies and procedures of the								
5		department to insure that they were, in fact,								
6		acting effectively to prevent the violation of								
7		civilians' constitutional rights, is that								
8	something that would be documented by the									
9	department?									
10		MR. MALLAMAD: Objection.								
11		MR. FUNK: Objection.								
12	MR. MALLAMAD: It's way beyond the									
13		scope of the deposition, but if you know,								
14		Chief, you can answer.								
15	A.	Yeah. During those times, that time period, I								
16		don't know.								
17	Q.	Are you aware of any instance between 1950 and								
18		May 19th, 1975, in which the final policy maker								
19		of the department undertook to review or								
20	determine whether there was any misconduct going									
21	on with respect to interviews of juvenile									
22		witnesses?								
23		MR. MALLAMAD: Objection. Same								
24		basis. You can answer.								
25	A.	No, I do not know that.								



- 1 0. If you turn back to Deposition Exhibit 8.
- 2 A. The verification?
- 3 | Q. Oh, sorry. Seven.

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- 4 A. That's the other interrogatories.
  - Q. All right. Interrogatory No. 15 on page 10, it states please identify and describe any and all changes made between 1950 to May 19th, 1975 for the City of Cleveland or Cleveland Police

    Department's policies, practices and/or training relating to any of the policies, procedures or training identified in Interrogatory numbers 12 through 13 above.

Are there any changes that you're aware of relating to any of the policies, practices or training other than what's reflected in the documents that we discussed today?

MR. MALLAMAD: Objection. Same basis. Asked and answered. You can answer, Chief.

- A. No, I'm not aware. No, I do not know.
- Q. If you turn to Deposition Exhibit 9, page 4, there's Interrogatory No. 15, which is the supplement to your prior interrogatory answer. And this one states that Defendant, City of Cleveland, states that there were a number of



1		changes made to its written policies, procedures								
2	and training materials from 1950 to 1980. The									
3	general police orders that were issued to members									
4		of the division of police have been produced.								
5		Is that a true statement?								
6	Α.	Yes.								
7	Q.	And what changes were made to the written								
8		policies, procedures and training materials from								
9		1950 to 1980?								
10		MR. MALLAMAD: Objection. That's								
11		a pretty broad question and it's been asked								
12		and answered throughout this deposition,								
13		but if you have additional information,								
14		Chief, you can answer.								
15		THE WITNESS: Yeah.								
16	A.	No, I don't. I do not know. I don't have any								
17		additional information.								
18	Q.	So if there's changes that were made to the								
19		policies, procedures and training materials from								
20		1950 to 1980 they would be reflected in the								
21	documents that have been produced?									
22		MR. FUNK: Objection.								
23		MR. MALLAMAD: Objection.								
24		That's not the testimony, but go								
25		ahead, Chief.								



- A. Yeah, I'd have to say that, like we said before, there are -- the documents that have been produced are one thing, there may be other documents out there that answer those questions but I don't know where they're located at.
- Q. What are those changes? Do you know of any changes to any policies, procedures or training from 1950 to 1980?

MR. MALLAMAD: Objection. Asked and answered. To the extent that you can provide additional information, Chief, go ahead and answer.

- A. No, I do not know what those changes were.
- Q. So, on the last sentence of Interrogatory No. 15, the supplemental answer, it says upon information and belief, the documents produced are not all the written policies, procedures and training materials that were in existence at this time.

And you said already that there may have existed other things out there, but you don't know what they are. Is that fair to say?

- A. Yes, that's fair to say.
- Q. Can you identify any of the changes made to any policies, procedures or training between 1950 to 1980?



1		MR. MALLAMAD: Objection. Asked							
2		and answered. I'm not sure how many							
3	MR. GILBERT: Shawn, you're not								
4	keeping track of all the questions. That								
5	was related to something else. You know,								
6	she's asking the same question for policy,								
7	supervision, GPOs, this is now training.								
8	MR. MALLAMAD: That was asked and								
9	answered, but to the extent you can answer,								
10	Chief, go ahead.								
11	Α.	No, I don't have any information on that. I							
12		cannot answer that.							
13	Q.	All right. Let's take a look at							
14		MS. WANG: Mark this as Exhibit							
15		12.							
16									
17		(Thereupon, Plaintiff's Exhibit 12 was marked							
18		for purposes of identification.)							
19									
20	Q.	All right. Take a look at Deposition Exhibit 12							
21		and let me know if you've seen it before. And							
22		I'll say for the record it's CLE 3912 through CLE							
23		3919.							
24	Α.	Yes, I've seen this before.							
25	Q.	Okay. This is a complaint report filed by an							



attorney named Stanley Tolliver against Detective
Terpay, Eugene Terpay; is that fair?

A. Yes, it is.

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Q. And on page 2, which is CLE 3913, there is a letter from Stanley Tolliver to Chief of Police Garrity at the time, dated November 25th, 1975.

And in it he advises the chief of police that -- and I'll just paraphrase here -- he brought his client to the Police Department. He advised the police that no statements were to be asked of his client unless he was present, and then later that day Detective Terpay called to say that his client had quote, changed his mind, and was willing to give a written statement.

Tolliver then recounts that on consultation with Clayton, the client, I've learned that he had not changed his mind, but was beaten by the police, one of which was Terpay.

Do you see that letter?

A. Yes, I do.

MR. FUNK: Objection.

MS. WANG: What's the objection?

MR. FUNK: It's hearsay. It's

multiple hearsays.

Q. The letter states, we are asking that you check



1 into this matter.

Are you aware of any action that the Police

Department took to check into this matter?

MR. MALLAMAD: Objection. You can

5 answer that, Chief.

- A. The action that I'm aware of is an investigation by Sergeant Comodeca in response to this complaint.
- O. That's Peter Comodeca?
- 10 A. Yes, it is.
  - Q. And what was the nature of his investigation?

    MR. MALLAMAD: Objection. The

    documents speak for themselves. But if you

    wish, the chief can review the documents

    and tell you what they reflect. He can do

    that. He obviously wasn't part of the

    investigation.
  - A. At an overview look at this, this is a standard procedure. Whenever any type of complaint is received, that it's investigated by a supervisory officer. That's still true today. It appears that this letter was provided to the sergeant at the time and he asked him to investigate it. And his results of what he did and exactly how he investigated are in this Form 1 that was



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2		by his	capta	ain	•						
3	0.	Okay.	And t	the	invest	igation	of	Ser	geant	Como	dec

Q. Okay. And the investigation of Sergeant Comodeca was that he interviewed the involved officers; is that correct?

MR. MALLAMAD: Objection. To the extent that you can glean from that 40-year-old document, Chief, go ahead.

A. Yes, correct.

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- Q. Is there any evidence that Sergeant Comodeca interviewed the complainant, Stanley Tolliver?

  MR. MALLAMAD: Objection. Same basis.
  - A. No, there's not. I do see he interviewed some
    FBI agents who were speaking to the complainant
    after the alleged allegation took place, but, no.
    And I don't see anything where he interviewed
    Stanley Tolliver.
- Q. Is there any evidence that Sergeant Comodeca interviewed George Clayton who was the person that was Stanley Tolliver's client?
- MR. MALLAMAD: Objection. Same basis.
- 24 A. No.
  - Q. Is the investigation that Sergeant Comodeca



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conducted into this complaint, consistent with the kind of investigation that would be conducted into a complaint like this today?

- A. No, it's not consistent.
- Q. And how would an investigation into an allegation that police officers had beaten somebody in the police station, how would that be conducted today?

MR. MALLAMAD: Objection. Beyond the scope of the deposition, but you can answer, Chief.

- Well, it's actually changed dramatically. Α. There are several avenues that one can use to file a complaint of alleged misconduct against an officer. They are assigned police investigators and at different times civilian investigators, which require that statements are obtained. And it's required that photographs are taken. required that the interviews are audio taped and transcribed. And every effort is to be made to do a complete impartial investigation. And the complainant is notified of the results of the investigation.
- Q. And do you agree with the use of those procedures today in investigating an allegation of



1	misconduct against a department member?						
2	MR. MALLAMAD: Objection. Beyond						
3		the scope. If you have an opinion, you can					
4	express it.						
5	A.	A. My opinion is today, yeah, I believe that those					
6		are good policies that we have in place.					
7	Q.	Would you characterize the investigation that					
8		Sergeant Comodeca did into the complaints of					
9	Stanley Tolliver concerning his client, George						
10	Clayton, a full and complete investigation?						
11		MR. FUNK: Objection.					
12		MR. MALLAMAD: Objection. Beyond					
13	the scope. To the extent that this						
14	reflects the entirety of the investigation,						
15		beyond that, Chief, you can answer if you					
16		have an opinion.					
17	A.	No. As far as today's standards, it would be a					

- A. No. As far as today's standards, it would be a little bit different, but I believe that -- I mean the sergeant did what he thought was appropriate as far as investigating this at the time.
- Q. Are you aware of anything that Sergeant Comodeca did in relation to this investigation other than what's reflected in these documents?

MR. MALLAMAD: Objection. Beyond



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1		the scope. If you know, Chief, you can				
2		answer.				
3	A.	No, I do not know of anything else that he did.				
4	Q.	Is there any discipline, that you're aware of,				
5		that Detective Terpay strike that.				
6		Is there any discipline strike that.				
7		Did the Cleveland Police Department issue any				
8		discipline to Detective Terpay as a result of				
9		this complaint?				
LO		MR. MALLAMAD: Objection.				
L1	MR. FUNK: Objection.					
L2	MR. MALLAMAD: Same basis. Beyond					
L3	the scope of this deposition. If you know,					
L4		Chief, you can answer.				
L5	A.	I do not know if any discipline was given to				
L6		Officer Terpay.				
L7	Q.	If there was any discipline that was given to				
L8	Officer Terpay as a result of this complaint,					
L9		would you expect that to be reflected in his				
20		personnel file?				
21		MR. FUNK: Objection.				
22		MR. MALLAMAD: Objection. Same				
23		basis. You can answer, chief.				
24	A.	I would, yes.				

Who is the final policy maker in the 1970s with



- respect to discipline of detectives?
- A. The chief of police.

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- Q. Was there any in-service training program in existence in 1975 for the members of the Police Department?
- A. I don't know if there was.
  - Q. Was there anything done by the final policy maker in the 1970s to insure that officers who withheld exculpatory evidence were disciplined?

MR. MALLAMAD: Objection. Asked and answered. Beyond the scope. You can answer if you have a response, Chief.

- A. No, I don't have any additional information on that.
- Q. Were you able to find any instance of an officer or a detective who was cited or disciplined for engaging in unlawful interrogation tactics in the 1970s?

MR. MALLAMAD: Objection. Same basis. You can answer, Chief.

- 21 A. No.
  - Q. In the 1970s, was there any sort of policy or practice in place for insuring that officers who suppressed evidence and then, you know, subsequently a motion to suppress was granted,



1		that they were disciplined or retrained in some						
2	way?							
3		MR. MALLAMAD: Objection. Asked						
4		and answered.						
5	MR. FUNK: Objection.							
6	MR. MALLAMAD: You can answer,							
7		Chief.						
8	Α.	In the 1970s, no, I do not know if there was.						
9		MS. WANG: All right. Okay.						
10								
11		EXAMINATION OF EDWARD TOMBA						
12		BY MR. GILBERT:						
13	Q.	Just a few questions and then we'll be done. I						
14		won't keep you long. We'll be out of here by						
15		1:30.						
16	Α.	Okay.						
17	Q.	Good afternoon.						
18	Α.	Good afternoon.						
19	Q.	I'll try to be brief.						
20		Deputy Chief, you read the complaint in this						
21		case, correct?						
22	Α.	Yes.						
23	Q.	All right. There was a reference, if you recall,						
24		to a report that was done, funded by the						
25		Cleveland Foundation regarding the Cleveland						



- 1 the operation of the Cleveland Police Department.
- 2 This would have been in 1975. You saw that in
- 3 the complaint, correct?
- 4 A. That reference?
- 5 | O. Yes --
- 6 A. Yes.
- 7 0. -- that reference.
- 8 | A. Yes.
- 9 Q. Did you through your efforts to review the
- 10 materials that were requested in this case, come
- across any reference to that report?
- 12 A. No.
- 13 Q. Any of the visits to the Cleveland Police Museum
- or any other repository of a document?
- 15 A. No, I did not.
- 16 | O. Okay. Do you have any knowledge as to whether
- any of the criticism or recommendations in that
- 18 report were followed up by the Cleveland Police
- 19 Department during the period of 1975 and
- 20 thereafter?
- MR. MALLAMAD: Objection. You can
- 22 answer, Chief.
- 23 A. No, I do not, no.
- 24 Q. Have you ever read that report?
- 25 A. No, sir, I have not.



1		MR. MALLAMAD: I'm sorry, for the				
2	record, what's the name of the report?					
3	MR. GILBERT: The name of the					
4	report is thank you for Private					
5	Sector Assistance to the Cleveland Police					
6	Department, authored by John Maddox and					
7		Mark Furstenberg.				
8		MS. WANG: And produced by the				
9		city in this case.				
10		BY MR. GILBERT:				
11	Q.	So, your answer is that you have not seen it,				
12		correct?				
13	A.	A. That's correct. I have not seen that report.				
14	Q.	Q. And you have not seen any written indication that				
15		any response or follow-up was done by the				
16	Cleveland Police Department?					
17		MR. MALLAMAD: Objection. You can				
18		answer, Chief.				
19	A.	That's correct, I'm not aware of that.				
20	Q.	Are you aware of a document called the 1974				
21		report by the mayor's crime commission concerning				
22		police corruption and criminal conduct in 1974?				
23	A.	No, I'm not aware of that.				
24	Q.	Okay. You saw this in the lawsuit complaint, did				
25		you not?				



1 A. I did, yes.

- Q. Well, there was an appendix to that which was a 1966 study by public administrations service on the Cleveland Police Department. Were you aware of that?
- A. Just by reading that document.
  - Q. Are you aware of a study that was actually conducted by the Cleveland Police Department itself called the Cleveland Police Department 1970 to 1980?
    - MR. MALLAMAD: Objection. Beyond the scope. You can answer, Chief.
  - A. No, I'm not aware of that document.
    - MR. GILBERT: Okay. Well, there's references there I believe that relate to training, guidance, supervision and things like that. So, I think it's within the scope, but if he doesn't know about it, he doesn't know about.
  - A. I don't, I'm not aware of that.
  - Q. Okay. Earlier in the deposition you mentioned some reference to diversity training that I believe you said it has existed since you came on the department, but you didn't believe it was in existence prior to your getting on the



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1		department. Do you remember that?			
2	A.	Yes, I did.			
3	Q.	Did I state your testimony correctly?			
4	A.	Yes, you did.			
5	Q.	Okay. Now, in addition to diversity training,			
6		were you aware of actual problems between			
7		minorities and white officers within the			
8		department before you came on the job in the			
9		1980s?			
10		MR. MALLAMAD: Objection. Beyond			
11		the scope. You can answer, Chief, to the			
12		extent that you have knowledge of that.			
13	A.	Yeah, no, I had no knowledge of that.			
14	Q.	Were you aware of any kinds of cartoons, lynching			
15		pictures, derogatory, racially negative postings			
16		in various districts of the Cleveland Police			
17	Department?				
18		MR. MALLAMAD: For what period of			
19		time?			
20	Q.	When you came on the force in the '80s.			
21		MR. MALLAMAD: Objection. Beyond			
22		the scope of this deposition. You can			
23		answer, Chief.			
24	A.	Yeah. No, I never saw anything like that in the			
25		Sixth District.			



- 1 | O. Okay. But in the department in general?
- 2 A. No.
- 3 MR. MALLAMAD: Same objection.
- 4 A. No.

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Q. Have you heard about these kinds of things going on in the Cleveland Police Department?

7 MR. MALLAMAD: For what period of time, Terry? In his career?

MR. GILBERT: Anytime. Anytime.

MR. MALLAMAD: Objection. Beyond the scope of this deposition. To the extent that you can answer, Chief, go ahead.

- A. Yes, I have heard of those things.
- 15 | Q. And tell me about that.
  - A. I heard that there were some derogatory things that were posted in different city buildings that were investigated by members of the division of police and other people, but never saw anything, never had any dealing with any of that during my tenure within the police division.
- Q. Was this during the term of Mayor White, if you know?
- 24 A. I don't know when it was.
- Q. Okay. Now, were you aware of a lawsuit regarding



1		discriminatory hiring practices in federal court					
2		that was ongoing from 1977 into the period where					
3		you were on the department? Were you aware of					
4		this?					
5	MR. MALLAMAD: Objection. Beyond						
6		the scope of this deposition. If you have					
7		knowledge, Chief, go ahead.					
8	A.	Yes, I was aware of that.					
9	Q.	And what were you aware that that generally					
10	speaking, what that lawsuit was about?						
11	MR. MALLAMAD: Same objection.						
12	A.	A. In general in general terms, it was about the					
13		hiring practices of the division of police and					
14		the promotional practices of the division of					
15		police. I wasn't involved in that as far as					
16		being hired or promoted, so I really I didn't					
17	pay a whole lot of attention to it.						
18	Q.	Were you aware that the City of Cleveland was					
19		under some kind of court order regarding the					
20		practices?					
21		MR. MALLAMAD: Same objection.					
22		You can answer to the extent you have					
23		knowledge.					
24	Α.	Right. No, I don't believe no, I don't have					



any knowledge of a court order.

1	Q.	Did you come across, in your search for					
2		documents, any kind of documents, any kind of					
3		letters or references or memos, regarding reform					
4		efforts in the Cleveland Police Department during					
5		the period of our case, from 1950 to 1980?					
6		MR. MALLAMAD: Objection.					
7		MR. FUNK: Objection.					
8		MR. MALLAMAD: You can answer,					
9		Chief.					
10	Α.	And just to be clear, I didn't perform any					
11		searches. You know, the officers, retired					
12		officers did, and the answer to that is, no, I					
13		did not.					
14	Q.	So, specifically do you know did you know if					
15		there was any effort on the part of the people					
16	that were doing actually the search for						
17		documents, did you ask them to look for any kind					
18	of internal documents that refer to any kind of						
19	reform efforts?						
20		MR. MALLAMAD: Objection.					
21		MR. FUNK: Objection.					
22		MR. MALLAMAD: You can answer to					
23		the extent you can.					
24	Α.	No, I did not.					
25	Q.	Are you aware of any kind of document, any					



1	documents or memos or letters that refer to				
2	reform efforts in the Cleveland Police Department				
3	between 1950 and 1980?				
4	MR. MALLAMAD: Objection. You can				
5	answer.				
6	A. No, I'm not aware of any.				
7	MR. GILBERT: I have no further				
8	questions.				
9	MR. MALLAMAD: The chief would				
10	like to read his deposition.				
11	MS. WANG: Oh, I have a couple				
12	follow-ups from what Terry asked. Sorry.				
13	MR. MALLAMAD: Go ahead.				
14	MS. WANG: Since he mentioned some				
15	documents, I have more.				
16					
17	(Thereupon, Plaintiff's Exhibit 13 was marked				
18	for purposes of identification.)				
19					
20	RE-EXAMINATION OF EDWARD TOMBA				
21	BY MS. WANG:				
22	Q. All right. So, the court reporter has handed you				
23	what's been marked as Deposition Exhibit 13. And				
24	it's titled Private Sector Assistance to the				
25	Cleveland Police Department. And that is the				



1	version produced by the city in this case,						
2	although unfortunately the little Bates numbers						
3	in the bottom got cut off.						
4		So, I'll let you take a look at that and then					
5	my question is just my first question is just:						
6	Have you seen that before?						
7		MR. FUNK: Do you know what the					
8		Bates numbers are?					
9		MS. WANG: Yes. CLE 977 through					
LO	1026. Also produced in this case is						
L1		Jackson 4905 to 4957.					
L2	Α.	No, I have not reviewed this document previous					
L3		'til today.					
L4	Q.	Okay. So on page there's a little roman					
L5		numeral					
L6	A.	Right.					
L7	Q.	page 7 of the little roman numerals					
L8	A.	Okay.					
L9	Q.	so under the training section, No. 2 there, it					
20		says a California based consultant group has been					
21		engaged by the city to develop a department					
22		in-service training program that's separate and					
23		as a result to given rise to concern within the					
24		department.					

Do you know what this -- what this California



- 1 based consultant group was?
- 2 A. No, I do not.
- Q. Do you know if there's any records kept by the city or the Police Department about the
- 5 consulting group?
- 6 A. No, I don't know if there are any records.
- Q. Okay. And so is it your understanding that the department did not have any in-service training programs at the time of this report in 1975?
- MR. MALLAMAD: Objection. Asked
- and answered.
- 12 A. Yeah, I believe I did answer that before and I

  13 was not sure if there was in-service the way we

  14 run it today, an annual in-service training.
  - Q. If this report indicates that there was not an in-service training program and they were as of September 1975 developing one, do you have any information to dispute that?
- MR. MALLAMAD: Objection.
- 20 A. No, I don't.

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- MR. MALLAMAD: You can answer.
- 22 | A. No, I do not.
- Q. Does the Cleveland Police Department do anything
- with the Cleveland Foundation these days?
- MR. MALLAMAD: Objection. Beyond



the scope. You can answer, Chief.

A. Yes, we do.

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- Q. Okay. And today what does the Cleveland

  Foundation do for the Police Department?

  MR. MALLAMAD: Same objection.
- The Cleveland Foundation, they do numerous Α. things. They're a wonderful community partner for us. At times we've gone to them and asked them for funding for certain projects that they've provided us. They sit on some of our boards, including our police foundation. So specifically what they funded -- they are a source of funding for us. So, exactly what they funded specifically, you know, I really couldn't tell you, but I've been involved with numerous representatives from that foundation and they're just a great civic asset to the city and to the division of police.
- Q. Okay. And just going back to the foreword at the very beginning of this document, it says in May of 1975 the Cleveland Foundation asked a number of lawyers, businessmen, civic leaders, to serve on a special committee of citizens concerned about criminal justice, which would recommend ways private funds could best be used to help



1	improve local criminal the local criminal						
2		justice system. This is one of five staff					
3		reports made to the committee.					
4	Is that characterization, is that familiar to						
5	you in terms of the role that the Cleveland						
6		Foundation plays today with respect to the					
7		Cleveland Police Department?					
8		MR. MALLAMAD: Objection. Beyond					
9		the scope. You can answer, Chief.					
10	Α.	You know, I really don't know. I mean, I can					
11		like I said before, my experience with them, but					
12		exactly how their organization is set up and what					
13	they do, I really can't comment on that, I don't						
14		know.					
15	Q.	Okay. So going back to inside the document, the					
16		page that's roman numeral six, the little ones					
17		not roman but					
18	A.	Uh-huh.					
19	Q.	the little numbers.					
20		MR. MALLAMAD: I'm sorry, roman					
21		numeral six or the number six?					
22		MS. WANG: Is that roman numerals?					
23		MR. FUNK: They're all roman					
24		numerals.					
25		MS. WANG: Oh, those are roman					



numerals. The other ones are arabic numerals. Okay.

- A. Right, I got it.
- 4 | Q. The bottom it says "project recommendations"?
- 5 A. Correct.

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- Q. Each of these recommended projects arose from our discussions with one or more Cleveland police officials or officers?
- 9 A. Right.
- 10 Then it says the police manual project has been Q. 11 formally requested by the chief. And it says 12 one, police manual, the Cleveland Police Manual 13 is out of date in light of new standards. 14 modern police manual is drafted pursuant to these 15 standard to create departmental uniformity. 16 Provide guidance to officers in complex 17 situations and instill public confidence and 18 protect conforming officers from civil liability. 19 The Cleveland Police Department is currently 20 rewriting its manual.

Do you know anything about the effort to rewrite the manual during this time period of September 1975?

- A. No, I do not.
  - Q. Okay. And is it your understanding that the



1		manual as of the publishing of this document				
2		which is September of 1975 the manual was in				
3		the process of being rewritten, but that had not				
4		yet been completed?				
5		MR. MALLAMAD: Objection. Beyond				
6		the scope. Assuming you have knowledge,				
7		Chief, go ahead.				
8	Α.	Right. By reading this I would say that is				
9		correct.				
10	Q.	Okay. And you have no information to contest				
11		that?				
12	Α.	No.				
13		MR. MALLAMAD: Same objection.				
14	Α.	No, I do not.				
15	Q.	Okay. Now by the way, are there annual				
15 16	Q.	Okay. Now by the way, are there annual reports of the Cleveland Police Department put				
	Q.					
16	Q.	reports of the Cleveland Police Department put				
16 17	Q.	reports of the Cleveland Police Department put out in the 1970s?				
16 17 18	Q. A.	reports of the Cleveland Police Department put out in the 1970s?  MR. MALLAMAD: Objection. Beyond the scope, but you can answer.				
16 17 18 19		reports of the Cleveland Police Department put out in the 1970s?  MR. MALLAMAD: Objection. Beyond the scope, but you can answer.  I don't know if there were annual reports.				
16 17 18 19 20	Α.	reports of the Cleveland Police Department put out in the 1970s?  MR. MALLAMAD: Objection. Beyond the scope, but you can answer.  I don't know if there were annual reports.				
16 17 18 19 20 21	Α.	reports of the Cleveland Police Department put out in the 1970s?  MR. MALLAMAD: Objection. Beyond the scope, but you can answer.  I don't know if there were annual reports.  Today are there annual reports?				
16 17 18 19 20 21 22	A. Q.	reports of the Cleveland Police Department put out in the 1970s?  MR. MALLAMAD: Objection. Beyond the scope, but you can answer.  I don't know if there were annual reports.  Today are there annual reports?  MR. MALLAMAD: Same objection.				



today?

1	MR.	MALLAMAD:	Same	objection.
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- A. They cover, obviously, crime statistics.
- 3 Budgetary expenditures. Programs that we
- 4 implemented within the division of police. I
- 5 mean, just -- I would have to say a broad review
- 6 or overview of what took place during our last 12
- 7 months of the division, in the division of
- 8 police.

- 9 Q. On page 11 the arabic numerals.
- 10 A. Regular page 11?
- 11 | Q. Regular page 11.
- 12 A. Okay. Got it.
- 13 Q. The second full paragraph says the lack of
- 14 non-salaried funds to be used as the discretion
- of the department is evidenced by one, the
- absence of ongoing in-service training for all
- officers.
- Do you see that sentence?
- 19 | A. Yes, I do.
- 20 Q. Do you have any information to dispute that there
- 21 was no ongoing in-service training for all
- 22 officers?
- MR. MALLAMAD: Objection.
- 24 A. No, I --
- MR. MALLAMAD: Beyond the scope.



	JACK	SON VS CITY OF CLEVELAND 20
1		To the extent you have personal knowledge,
2		Chief, you can answer.
3	A.	No, I do not.
4	Q.	Well, you've been designated by the city to
5		testify about all training that existed in the
6		1970s; is that right?
7	A.	Yes, I have been.
8	Q.	All right. Your answers are in the capacity as
9		the person who was designated by the city to
10		testify about the training that did or did not
11		exist in 1970 to 1980
12		MR. MALLAMAD: Objection.
13	Q.	is that true?
14		MR. MALLAMAD: Based on the
15		records that were available and have been
16		located. This gentleman is not a member of
17		the Police Department in the 1970s.
18	A.	Yes.

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MS. GILBERT: Then we need

somebody, right?

MR. MALLAMAD: Good luck.

- Yes, that's correct and I fully understand that. Α.
- All right. And if there were some other training that the City of Cleveland provided, you don't know what that is?



1		MR.	MALLAMAD:	Objection.	Same
2	basis.	You	can answer	•	

- A. Right. That is correct. I am unaware of that.
- Q. All right. Turning to page 25 -- actually go to 24, which is the page before.
- 6 A. Okay.

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- Q. So, on page 24 the Cleveland Foundation here is giving project recommendations. And at the bottom it says "police manual". Now, turn to page 25.
- 11 A. Okay.
- MR. MALLAMAD: There's not a question yet, Chief, so I'm going to object to the beginning of that statement, but go ahead.
- Q. The Cleveland -- on page 25 it says the Cleveland Police Manual rules of conduct was promulgated in 1950 and like the manuals of many departments is out of date in light of these new standards.

Actually, let me read the sentence before. So from the bottom of 24 to 25 it says, 1, police manual, the importance of police policy has been recognized widely during the past few years culminating in recommended national standards for implementing police policy.



1		And then in a footnote it cites to ABA
2		standards and MAC standards dating to 1973.
3		Then it says the Cleveland Police Manual
4		rules of conduct and discipline was promulgated
5		in 1950 and like the manuals of many departments
6		is out of date in light of these new standards.
7		Do you have any information to dispute that
8		there were, in fact, national standards for
9		implementing police policy that existed at the
10		time?
11		MR. MALLAMAD: Objection
12		MR. FUNK: Objection.
13		MR. MALLAMAD: to form, as to
14		the scope of the deposition. To the extent
15		you have personal knowledge, Chief, you can
16		answer.
17	Α.	No, I do not have knowledge of that.
18	Q.	Okay. Do you have any information, one way or
19		another, with respect to sorry, strike that.
20		Do you have any information to contest that
21		the Cleveland Police Manual that was promulgated
22		in 1950 was still in existence and in effect in
23		September of 1975?
24		MR. MALLAMAD: Same objection.

You can answer, Chief.



- 1 A. No, I don't have any information if it was the same manual.
  - Q. On page 27 on the training, it says presently there is little formal training going on in the department and there's little reason to believe that the department can make a major investment in training; however much importance it may attach to training.

Do you have any information to dispute that there was little formal training going on in the department at the time?

MR. MALLAMAD: Objection. Beyond the scope. Beyond this mans' personal knowledge, but to the extent you know, Chief, you may answer.

A. No, I do not know.

\_ \_ \_ \_

18 (Thereupon, Plaintiff's Exhibit 14 was marked for purposes of identification.)

Q. So, the court reporter has handed to you what has been marked as Deposition Exhibit 14. It is Bates Stamped Jackson 4756 through 4904. And for the record it was also produced by the city as CLE 1105 through 1252.



1		Have you ever see that document before?			
2		MR. MALLAMAD: This one appears to			
3	be blank.				
4		MS. WANG: Oh, what happened to my			
5					
6	Α.	Here we go well here, these are all blank.			
7					
8		(Off the record.)			
9					
10		BY MS. WANG:			
11	Q.	So, if you would just turn to oh, have you			
12	seen that document?				
13	Α.	Yes.			
14	Q.	Q. Okay. And did you review it in the context of			
15	preparing for your deposition today?				
16	Α.	I reviewed parts of it, yes.			
17	Q.	Okay. If you turn to the first little tab there,			
18		that Jackson 4762, there's a highlighted sentence			
19	there that states departmental procedures and				
20	rules have not been revised in nearly one quarter				
21	of a century despite the overwhelming changes in				
22	society and the police functions which have taken				
23	place in that time.				
24		Are you aware of any information to disagree			
25		with that statement?			



1	MR. MALLAMAD: Objection. Form.
2	Beyond the scope of the deposition. To the
3	extent you have any personal knowledge,
4	Chief, you can answer.

- A. No, I have no knowledge if that's true.
- Q. Okay. And this is a preliminary report of the mayor's crime commission created March 16th, 1974 with recommendations, and then there's another date, June 6th, 1974, right?
- A. Yes, there is.

Q. So actually this is a document that was commissioned by the mayor itself concerning the Cleveland Police Department and issues concerning police corruption that were taking place in the Police Department at the time. Is that fair to say?

MR. MALLAMAD: Objection. Beyond the scope. To the extent you have personal knowledge of the reason this was created, Chief, you can answer.

- A. I don't know the reason why it was created.
- Q. Okay. Do you have any information to dispute the fact that the Cleveland Crime Commission was commissioned by the mayor of Cleveland at the time?



1 MR. MALLAMAD: Objection. Same 2 basis.

- A. Yeah, I have no -- nothing to dispute that.
- Q. Okay. So, if you turn to the page that is Bates
  Stamped Jackson 4843, it is labeled appendix item
  F and it is a memo from Mayor Ralph Perk to James
  Carney, Director of Safety, and Gerald Rademaker,
  Chief of Police, it's dated October 5th, 1972.
  Do you see that?
- 10 A. Yes, I do.

Q. Now, on page 6 of the memo, which is Bates
Stamped Jackson, 4848, it says at the bottom,
immediate steps should also be undertaken for a
complete revision of the rules of conduct and
discipline written in 1950 for members of the
Cleveland Police Department so that it is
consistent with the requirements and conditions
that exist today in 1972.

Do you see that?

- A. Yes, I do.
- Q. Are you aware of whether or not the Mayor, Ralph Perk, issued a memo to the chief of police and the director of public safety in 1972 telling the Police Department that they needed to revise their 1950 police manual?



1		MR. MALLAMAD: Objection. Beyond
2		the scope. To the extent you have personal
3		knowledge of that, you can answer, Chief.
4	Α.	No, I don't no, I do not have any personal
5		knowledge of that.
6	Q.	Okay. Are you aware of whether or not the
7		Cleveland Police Manual was revised at any time
8		between 1972 and 1975?
9		MR. MALLAMAD: Objection. Same
10		basis. You can answer.
11	Α.	No, I did not.
12		MS. WANG: I have no further
13		questions.
14		MR. MALLAMAD: The chief would
15		like to read. Thank you.
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1	SIGNATURE OF DEPONENT						
2	I the undergianed EDWARD TOMBA de hereby						
3	I, the undersigned, EDWARD TOMBA, do hereby						
4	certify that I have read the foregoing						
5	deposition and find it to be a true and						
6	accurate transcription of my testimony, with						
7	the following corrections, if any:  PAGE LINE CHANGE REASON						
8	PAGE LINE CHANGE REASON						
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24	EDWARD TOMBA						
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1	
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3	CERTIFICATE
4	
5	The State of Ohio, ) SS: County of Cuyahoga.)
6	
7 8 9	I, Brian A. Kuebler, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving
10	of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the
11	truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy,
12	and was later transcribed by computer-aided technology under my direction; that this is a true record of the testimony given by the
13	witness; that said deposition was taken at the aforementioned time, date and place, pursuant to
14	notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the
15	parties, or a relative or employee of such attorney or financially interested in this
16	action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract
17	as defined in Civil Rule 28(D).
18	IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this
19	day of, A.D. 20
20	Stor
21	Brian A. Kuebler, Notary Public, State of Ohio
22	55 Public Square, Suite 1332 Cleveland, Ohio 44113
23	My commission expires June 12, 2017
24	
25	



1 2	Reference No.: 355660
3 4	Case: JACKSON vs CITY OF CLEVELAND
	DECLARATION UNDER PENALTY OF PERJURY
5	I declare under penalty of perjury that
6	I have read the entire transcript of my Depo-
	sition taken in the captioned matter or the
7	same has been read to me, and the same is
	true and accurate, save and except for
8	changes and/or corrections, if any, as indi-
	cated by me on the DEPOSITION ERRATA SHEET
9	hereof, with the understanding that I offer
	these changes as if still under oath.
10	
11	The same of the sa
12 13	Edward Tomba
14	NOTARIZATION OF CHANGES
15	(If Required)
16	(II Required)
17	Subscribed and sworn to on the day of
18	<b>_</b>
19	, 20, before me,
20	
21	(Notary Sign)
22	
23	(Print Name) Notary Public,
24	
25	in and for the State of



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